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Submission to

List of Issues Prior to Reporting (LOIPR)

The 39th Session
of the Committee on the Protection of the Rights of All Migrant Workers
and Members of Their Families

Submission to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

List of Issues Prior to Reporting (LOIPR) on Indonesia's anticipated 2nd periodic report under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The Indonesia National Commission on Human Rights (Komnas HAM), hereby submits a List of Issues Prior to Reporting (LOIPR) to the 39th session the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW). Komnas HAM's list of issues prior to reporting is intended to provide additional information regarding status of the implementation of the Convention the Protection of the Rights of All Migrant Workers and Members of Their Families in Indonesia.

Indonesia has ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families since May 12, 2012, which was later adopted as the Law No. 6/2012.

Indonesia is a fairly large sending country for migrant workers. Based on data submitted by The Indonesian Migrant Workers Protection Board of The Republic of Indonesia (BP2MI), there were around 274,965 placements of Indonesia migrant workers overseas. The number of male Indonesian Migrant Workers was 107,102 (39%) and female Indonesian Migrant Workers was 167,863 (61%).

Positive Aspect

1. In terms of regulation, there has been a number of progresses in the regulation of the governance of overseas labour migration, including: guarantees of protection prior to, during and after work.
2. In general, Law No.18/2017 on the Protection on Indonesian Migrant Workers aims to provide comprehensive protection for Indonesian workers overseas, Article 6 paragraph (1) migration services (Integrated one-stop service/LTSA provided by the regional government as regulated in Articles 40-41, Job Training Centres by the government, up to services at village level), all must be provided by the State, with no migration costs as regulated in Article 30 paragraph (1), and regulations on a strong criminal sanction against unprocedural placement as regulated in Articles 79-85.
3. The Government of Indonesia (GoI) has revised the Law No.39/2004 on the Placement and Protection of Indonesian Migrant Workers into the Law No.18/2017 on the Protection of Indonesian Migrant Workers. In fact, the revision of the law shows a new step in the protection of Indonesian Migrant Workers, which has adopted the Convention on the Protection of the Rights of All Migrant Workers and Their Family Members.
4. The GoI also has enacted several derivative regulations on the Law No.18/2017, namely: the Government Regulation No.10/2020 on Placement Procedures, the Government Regulation No.59/2021 on the Protection of Indonesian Migrant Workers, Regulation of Minister Manpower No.10/2019 on Procedures for Granting Permits to Indonesian Migrant Worker Placement Companies (P3MI), Regulation of Minister Manpower No.9/2019 on Procedures for Placement of Indonesian Migrant Workers, and Regulation of the Indonesian Migrant Workers Protection Board of the Republic Indonesia No. 09/2020 on Exemption from Indonesian Migrant Workers Placement Fee.

General Measures of implementation (arts. 73 and 84)

Ratification of relevant instruments

5. The Gol has ratified the 1990 Migrant Workers Convention in 2012 and has adopted it into national law, namely Law No. 6/2012 on the Ratification of the International Convention on the Protection of the Rights of Migrant Workers and Their Families. In addition, Indonesia has become a state party to 8 (eight) major human rights conventions, except the International Convention for the Protection of All Persons from Enforced Disappearance.

Coordination

6. The Institutions responsible for providing protection for migrant workers and their families are spread across various Ministries/Institutions both at the central and regional levels. This causes challenges and obstacles in carrying out coordination and cooperation between these institutions.
7. The Indonesian Migrant Workers Protection Board of the Republic of Indonesia (BP2MI), the Directorate of Immigration, and the Directorate of Protection of Indonesian Citizens, are some of the key institutions responsible for the protection of Indonesian Migrant Workers.
8. In 2024, the Prabowo Subianto administration formed a new ministerial structure, in which, the number of ministries/institutions responsible for managing migrant workers increased, including: The Ministry of Immigration and Corrections, the Ministry of Foreign Affairs, the Ministry of Protection of Indonesian Migrant Workers, which are placed under the coordination of different coordinating ministries. This expansion of the structure complicates coordination between the Ministries/Institutions responsible for the protection of Indonesian Migrant Workers.
 - What measures will the Gol take to strengthen coordination within the new state institutional system considering that the functions and authorities for handling migrant workers' rights are increasingly spread across various institutions?

Data collection

9. Migrant workers data collection is crucial in handling cases of alleged violations of migrant worker rights. The absence of integrated migrant worker data makes handling such cases difficult.
10. Nowadays, migrant workers data collection still depends on the voluntary registration filed by migrant workers and the proactive efforts by the Gol representatives abroad.
11. The data of ministries/institutions with mandate to handle Indonesian Migrant Workers issues are not yet integrated (interoperability). Some of those data are data on Indonesia Migrant Workers placement by BP2MI, data on problematic Indonesia Migrant Workers by the Ministry of Foreign Affairs, and data on public complaints about alleged violations of Indonesia Migrant Workers rights by Komnas HAM.
12. The Gol faces challenges in its efforts to establish a centralized and comprehensive database on migrant workers including the lack of understanding of state officials regarding the importance of disaggregated data, limited of trained and reliable data processing resources, and the capacity of technology as well as infrastructure in building a centralized database.

- What steps has the Gol taken to improve data collection on migrant workers across institutions?
- What measures has the Gol taken to improve the understanding of state officials' skills to proactively collect and manage data on migrant workers?
- What steps has the government of Indonesia taken in order to provide tools for migrant workers to self-report to strengthen data collection on migrant workers at home and abroad?

Independent monitoring

13. Komnas HAM has carried out supervision and monitoring of cases against migrant workers' rights. Monitoring is carried out through receiving complaints follow up with monitoring cases. In addition, Komnas HAM has also strengthen its coordination and monitoring with actors and institutions through studies, regional conferences, high-level dialogues, and coordination with other state institutions.
14. Komnas HAM members composition consists of 3 women out of 9 commissioners; 1 person with disability out of 9 commissioners. Selection process goes through stages namely: competency test, record tracking, public debate, panel interviews, fit and proper test at the parliament.
 - To what extent has the Gol supported NHRI to supervise the fulfilment and protection of the rights of migrant workers aand their families?
 - To what extent has the government considered NHRI recommendations in handling cases and improving policies for migrant workers and their families?

Training on and dissemination of information about the Convention

15. The Gol cq. Ministry of Foreign Affairs has implemented socialization and training program on the protection of Indonesian migrant workers, especially for those who are vulnerable to human trafficking and exploitation. In accordance with the MoU among the Ministries, namely: Manpower; Tourism; Health; Youth and Sports; State-Owned Enterprises; Cooperatives and Small and Medium Enterprises; Communication and Information; Villages; Development of Disadvantaged Regions and Transmigration – there are several programs that have been implemented. Those are: screening of application form, counselling, physical shelter, mutual legal assistance, repatriation, and diplomacy at all level (multilateral, bilateral, and regional levels). The implementation of this program is targeted at provincial governments, district/city governments, village governments, the private sector, universities, local partners or community groups in the village, and financial institutions.
 - To what extent has training on the 1990 Migrant Workers Convention been provided to officials from institutions responsible for protecting the rights of migrant workers and their families? At what level? Is this also carried out up to the provincial and/or district government levels?
 - What forms of training are provided to these state officials?

Participation of civil society

16. The Gol has attempted to integrate civil society participation in the protection of migrant workers. One of its initiatives is the Productive Migrant Village Program (DESMIGRATIF). which involves local communities in areas with a high number of migrant workers. This program focuses on economic protection and empowerment

through the development of productive businesses, parenting services for migrant workers' children, and cooperatives that support the economic resilience of migrant families in their home villages. The DESMIGRATIF pilot project in Tunggangri Village, East Java aims to reduce families' dependence on working abroad and improve their welfare at home. However, there is lack of information on whether the Government of Indonesia also engage with civil society in the countries where migrant workers are placed.

- In what forms and which fields of civil society involvement have been carried out by the government in the domestic level? Is it done at the national level, or also at the provincial/district level?

General principles (arts. 7 and 83)

Non-discrimination

17. Law No. 18/2017 on the Protection of Indonesian Migrant Workers states that every prospective Indonesian migrant worker or Indonesian migrant worker has the right to receive non-discriminatory treatment before, during, and after work. This protection also applies to migrant worker families.

Right to an effective remedy

18. Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers states that the GoI has the duty and responsibility to coordinate and cooperate between related agencies in responding to complaints and handling cases of prospective Indonesian migrant workers and Indonesia migrant workers.
19. According to the 2023 Komnas HAM report, efforts to handle Indonesian migrant worker victims are more focused on evacuating victims in the country of placement and returning victims to their areas of origin. Meanwhile, efforts to recover victims who have experienced trauma have not been optimized. Rehabilitation centres have only been built in two areas, both in Jakarta and Tanjung Pinang, Kalimantan. This is one of the factors that hinders the implementation of the recovery of migrant workers who are victims.
 - What is the Government of Indonesia strategy to accelerate the handling of complaint cases through coordination of cooperation between ministries?
 - What recovery programs do the Government of Indonesia have, both at the national and provisional levels?
 - Which institutions are responsible for handling recovery for migrant workers and their families?
 - Are there any special recovery programs for migrant workers' children?

Human rights of all migrant workers and members of their families (arts. 8-35)

Border management and migrants in transit

20. Law No. 6/2011 on Immigration has been revised three times. Article 113, which regulates the criminalization of illegal entry and exit, remains unchanged. Many undocumented migrant workers avoid official borders to avoid deportation and choose routes that are not strictly monitored. One of the cases handled by Komnas HAM is the practice of abuse of authority by officers at the Aruk Border Post who asked for money from migrant workers to be allowed to enter West Kalimantan.

21. Law No. 21/2007 on the Elimination of Human Trafficking Crime has limited criminal penalties for irregular migration.

- Why does the Gol did not revise the criminalization of irregular migration in the Immigration Law?
- How does the Gol ensure the implementation of Law 21/2007 on Elimination of Human Trafficking Crime, in particular to the protection of migrant workers in irregular migration, considering that there is still a criminal threat for irregular entry and exit in the Immigration Law?
- Is law enforcement carried out against abuse of authority by state officials on migrant workers?

Labour exploitation and other forms of ill-treatment

22. In 2021-2022, Komnas HAM handled 31 cases of migrant workers, who experienced violence from both employers and migrant workers agencies. In addition, during 2021-2023 Komnas HAM received 86 complaints related to the Crime of Human Trafficking. The problems that were widely reported included: poor treatment of crew members working on foreign ships that taking form of poor working conditions and abusing; and the practice of sending female migrant workers and domestic workers who experience labour exploitation.

- How is law enforcement carried out against cases of exploitation and violence against migrant workers in Indonesia?

Due process, detention and equality before the Courts

23. Law No. 6/2011 on Immigration has been revised several times, but provisions regarding administrative detention as a last resort and non-detention alternative have not been regulated

- When will the Gol revise the provisions on administrative detention in the Immigration Law to be in line with the 1990 Migrant Workers Convention?
- How does the Gol provide protection for migrant workers who are detained in the country of placement? What challenges are encountered when coordinating with the country of placement?
- Did the assistance provided by Gol to migrant workers who are detained in the country of placement covered comprehensive, including legal, medical, psychological, and other assistance?

Consular assistance

24. Law No. 18/2017 on the Protection of Indonesian Migrant Workers has guaranteed the right to assistance, mediation, advocacy, and provision of legal assistance by the Gol and/or Embassies/Consulate Generals of the Republic of Indonesia and guardianship in accordance with the state placement law when facing legal problems.

25. As support for the protection of Indonesian Migrant Workers who are facing lawsuit, the Gol through the Ministry of Foreign Affairs encourages mandatory counsellor notification. However, the agreement is still limited to around 30 countries.

26. The Ministry of Foreign Affairs along with its ranks and consular/embassies in the countries where Indonesian Migrant Workers are placed have taken various steps to protect Indonesian Migrant Workers such as crime on human trafficking screening forms, psychological protection (counselling), physical shelter, legal protection, repatriation, diplomacy at all levels

and strengthening mutual legal assistance, including strengthening human resources capacity through training, technical guidance, and a tiered education curriculum for diplomats.

27. One of the challenges faced by representatives of Gol abroad is the repeated legal cases faced by Indonesian Migrant Workers, such as crime on human trafficking in form of scamming. Indonesian Migrant Workers are able to go to the country of placement several times and face the same legal problems.

- What are the domestic preventive measures taken by the Gol to prevent repeated cases of Indonesian Migrant Workers, in particular on online scamming cases?
- What are the strategies and steps taken by the Gol in adding mandatory counsellor notification agreements and maximizing consular assistance in efforts to protect Indonesian Migrant Workers?

Remuneration and conditions of work

28. Based on Komnas HAM data, several number of forced labour practices were found against female migrant workers or irregular domestic workers who experienced sexual exploitation and slavery in the country of placement. One form of exploitation/forced labour/slavery found was the use of labour and abilities beyond reasonable working hours.

- How is the Gol effort to follow up on the working conditions of migrant workers in the form of exploitation/forced labour practices (utilization of work and abilities beyond reasonable working hours)?

Freedom to join and take part in meetings of trade unions

- What are the challenges for migrant workers to join trade unions - both at home and in the placement country?

Social security

29. The Gol has stipulated Regulation of the Minister of Manpower No. 4/2023 on Social Security for Indonesian Migrant Workers which regulates the work accident insurance scheme, death insurance, and old age insurance for migrant workers, both before, during, and after placement. This regulation requires Migrant Workers Agencies (P3MI) to register their migrant workers in social security membership. Therefore, migrant workers who have this social security are those who work through legal Migrant Workers Agencies. On the other hand, irregular Indonesian Migrant Workers tend not to have social security insurance.

- What steps does the Gol take to expand social security membership for all regular and irregular migrant workers - including their families?

Birth registration and nationality

30. Law No. 12/2006 on Citizenship has regulated that a child born from an Indonesian mother/father who is married and/or has children with a foreigner born abroad is entitled to Indonesian citizenship as long as they are registered before the age of 18. However, not all Indonesian migrant workers have knowledge of the procedures for registering births as Indonesian citizens. This can lead the child of migrant workers being stateless.

- What is the Gol strategy to improve knowledge and understanding of regulations related to citizenship for Indonesian migrant workers in order to support the registration of children of Indonesian migrant workers born abroad?

Other rights of migrant workers and members of their families who are documented or in a regular situation

Pre-departure and the right to be informed

31. Prospective migrant workers face a complicated process of document management in preparation for departure. Lack of understanding of these procedures often results in delays or rejections that prevent their departure. They also often do not have access to sufficient information about their rights, the migration process, and working conditions in the placement country. This often causes migrant workers to suffer losses such as becoming victims of human trafficking.
32. BP2MI has a pre-departure training program for prospective migrant workers, but the program can only reach migrant workers who are documented or through official channels.
33. In Indonesia, the undocumented migrant workers did not receive training and adequate information on their rights and placement procedures.
 - What strategic steps has the Gol taken that focus on empowering migrant workers before departure and guaranteeing their rights to receive accurate, safe, and sustainable information?
 - What steps has the Gol taken to reach undocumented migrant workers so that they can obtain information regarding their procedures and rights in the placement

Right to vote and to be elected in State of origin

34. In the 2024 General Election, a large number of Indonesian migrant workers abroad were unable to participate in the elections.
 - Does the Gol investigate the obstacles for migrant workers to participate in national elections?
 - What are the steps taken by government to open access to migrant workers' participation in elections in the receiving countries?

Right to transfer earnings and savings

35. Indonesian migrant workers are predominantly women, who have limited access to banking. Moreover, the cost of remittances from abroad to Indonesia is still high.
36. The Indonesian government has adopted several remittance policies to facilitate migrant workers, such as regulation and protection, increasing access to financial services, cooperation with destination countries and international institutions. These steps are carried out by simplifying and speeding up the money transfer process, outreach and education to increase migrant workers' awareness of safe and efficient remittances, as well as technological innovation.
 - What steps are taken by the Gol to facilitate affordable, easy and safe remittances for Indonesian migrant worker, particularly women migrant workers?

Promotion of sound, equitable, humane and lawful conditions in connection with the international migration of workers and members of their families

Children in situations of international migration

37. In 2023 Komnas HAM had received report from Migrant CARE in Malaysia regarding the raid, arrest and detention of 67 undocumented Indonesian citizens in Value Spring, Negeri Sembilan, Malaysia, which was carried out by the Malaysian Immigration Service. A total of 36 of them were children (20 boys and 16 girls). These children have Travel Letter Like Passport, birth certificates, enrolled as students, and registered at the Embassy of the Republic of Indonesia Kuala Lumpur. The detention facilities were not suitable for children. After the detention, the children could no longer go to school. Meanwhile, Malaysia is not party to the CMW.

- What is the Gol approach to the government of the receiving countries in addressing the situation children of migrant workers in conflict with law in countries that are not yet party to the CMW convention?

International cooperation with countries of destination

38. To protect Indonesian migrant workers, who are in conflict with the law, the Gol through the Ministry of Foreign Affairs has developed Cooperation on Mandatory Counselor Notification. According to the Ministry of Foreign Affairs, there are about 30 countries have MCN Cooperation with Indonesia.

39. Based on Komnas HAM case reports, some of the migrant workers who became victims of TIP could not have sufficient access to justice. Those include termination of case report in the police, non-judicial case settlement, perpetrators who are prosecuted are limited to field actors, and lack access to restitution.

- How does the government guarantee that every Indonesian migrant worker (both documented and undocumented) who are in conflict with the law in the destination country receives the same protection and legal assistance?
- What steps are taken by the Gol to coordinate with destination countries in order to protect undocumented Indonesian migrant workers?

Recruitment Agencies

40. Based on Articles 52 and 53 of the Law No. 18/2017 on the Protection of Indonesian Migrant Workers, the Migrant Worker Placement Company (P3MI) has task as follow: to seek employment opportunities; placing Indonesian Migrant Workers; and resolve the problems of Indonesian Migrant Workers placed there. However, Komnas HAM found cases in 2023, in East Nusa Tenggara and West Kalimantan, where several officers of the Placement Company involved in trafficking. However, law enforcement was only imposed on field recruiters, while there was no legal action taken against Placement Company's officers.

- How does the Gol monitor the Placement Company in carrying out its duties as regulated in Articles 52 and 53 of the Law No. 18/2017 on the Protection of Indonesian Migrant Workers?

Return and reintegration

41. In 2021-2022, Komnas HAM received 40 cases of migrant workers requested repatriation. The majority of migrant workers were undocumented workers. As undocumented workers, the Gol could not provide the returning cost. The migrant workers should bear the cost themselves, and therefore hampering their returning process.

- What are the Gol's strategy to ensure that the return and reintegration program can cover all documented and undocumented migrant workers and their families?

Trafficking in persons

42. Komnas HAM is in the view that the work of the National TIP Task Force has not been effective in preventing and handling TIP as regulated by the Law No. 21/ 2007 on the Crime of Human Trafficking and the Law No. 18/ 2017 on the Protection of Indonesian Migrant Workers.

43. Law enforcement against TIP could be delivered effectively due to the different perception between law enforcers (between the police, prosecutors and courts) in determining an act of crime as a crime of TIP.

44. According to the Law No. 21/ 2007 on the Crime of Human Trafficking, restitution payments are charged to the Placement Company. However, Komnas HAM's findings found that only 2 (two) out of 10 (ten) TIP cases concluded with verdict and decision of restitution. Meanwhile, the majority of cases ended in informal settlements outside the court.

- What obstacles are faced in implementing the work of the TIP Task Force?
- What are the steps taken by the Gol to increase the effectiveness of the TIP Task Force? What obstacles are faced in implementing the work of the TIP Task Force?
- How do the Gpl strengthen the capacity and coordination among government officers and/or institutions in protecting migrant workers who become victims of TIP?