

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

NHRI Submission for List of Issues Prior to Reporting Indonesia's National Commission on Violence Against Women (Komnas Perempuan)

1. This List of issues Prior of Reporting (LoIPR) is prepared by Indonesia's National Commission on Violence against Women¹ (Komnas Perempuan), an independent state body for the enforcement of women's rights in Indonesia. Komnas Perempuan was established through Presidential Decree No. 181 of 1998, which was then reinforced by Presidential Regulation No. 65 of 2005, in response to the demands of civil society (particularly women's groups) to the government. These demands called for the state to take responsibility for cases of sexual violence against women, particularly the sexual violence experienced by women in the May 1998 riots aimed at ethnic Chinese in Indonesia.
2. Komnas Perempuan's mandate is to develop conditions conducive to the elimination of all forms of violence against women and to promote the enforcement of women's human rights in Indonesia. This includes increasing efforts to prevent and reduce all forms of violence against women and to protect women's human rights. Komnas Perempuan has the authority to make all efforts to: increase public awareness; conduct monitoring, fact-finding and reporting on situations of violence against women as violations of human rights; review laws and policies and conduct strategic research; provide suggestions and considerations on policies to government agencies and community organizations; and develop cooperation at national, regional and international levels.
3. This LoIPR is based on Komnas Perempuan monitoring and case complaint related to protection of the rights of all migrant workers and their family members.

Article 84 :

4. **Implementation and Harmonization of 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Convention on Migrant).** The bill on the Protection of Indonesian Migrant Workers Abroad has being discussed by Parliament for the past six years. Yet, the bill has not accommodated Convention on Migrant in its framework and substance, including other regulation and by laws in regional level.

Question: What are measures that Government of Indonesia has taken to implement and harmonize Convention on Migrant with other law and regulations, including to ensure its application to regional and local level?

Article 64 and 65:

5. **Indonesian migrant workers facing the death penalty abroad.** Ministry of Foreign Affairs has recorded that there are 228 Indonesian migrant workers facing the death penalty abroad, which include 36 people in Saudi Arabia, 168 people in Malaysia, 16 people in People's Republic of China, 4 people in Singapore, 2 people in Laos, 1 person in United Arab Emirates and 1 person in Vietnam. They face death row due to conviction on criminal offense, interalia murder, drugs abuse, kidnapping, witchcraft, *zina* (extramarital sex), and belonging of weapons.

¹ Komnas Perempuan's work foundation is the 1945 Constitution of the Republic of Indonesia, Law No. 7 of 1984 regarding the Ratification of the Convention of All Forms of Discrimination Against Women (CEDAW), Law No. 5 of 1998 regarding the Ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Declaration on the Elimination of Violence against Women of 1993 and other policies on human rights.

Question:

What are Government of Indonesia efforts to ensure protection for Indonesian migrant worker face death row abroad?

What measures that Government of Indonesia has taken to free migrant worker from death row abroad?

How Government of Indonesia ensure that migrant workers enable to access communication to their families during their work?

What are policies and specific programs that Government of Indonesia has provided for recovery for the family for the post-execution of convicted migrant workers?

6. **Moratorium of migrant worker and vulnerability of human trafficking.** Government of Indonesia has issued a policy to halt sending of migrant workers, particularly for domestic workers in 21 Middle-east countries, such as Algeria, Saudi Arabia, Bahrain, Iraq, Iran, Kuwait, Lebanon, Libya, Morocco, Mauritania, Egypt, Oman, Pakistan, Palestine, Qatar, South Sudan, Syria, Tunisia, United Arab Emirates, Yemen and Jordan. This measure is taken to address many cases occurs to migrant workers in those countries. However, there is a lack of monitoring and evaluation towards policy implementation in State of employment, including work placement and its condition and impunity prevention measure from corporation and agencies that send migrants workers abroad. This situation has resulted to an illegal migration, recruitment and human trafficking which affect to the vulnerability of migrants since they will be undocumented.

Questions :

How does Government of Indonesia address illegal migration and recruitment of migrant workers?

Is there any significant progress from moratorium policy?

How does Government of Indonesia ensure right to freely move for migrant worker so that the moratorium will not halt a person to work abroad?

7. **Access to justice for migrant works and impunity of perpetrators.** Human rights violations towards migrant workers occur at each migration process, from recruitment, during their work and when they return home. They experience physical, psychological, sexual and economic violence. However, mostly those cases are solved through mediation that doesn't punish the perpetrators. As the result, the similar cases keep reoccurring because of their impunity.

Questions:

How does Government of Indonesia break the cycle of impunity to solve root causes of this crime in migration process?

How is the complain mechanism work and procedure related to violation of migrant workers rights?

How does Government of Indonesia manage and monitor the involvement of private sectors, such as agency, assurance companies, in Indonesian migration scheme?

What are Government of Indonesia efforts to punish perpetrators at State of employment, particularly for sexual violence towards women migrant workers?

Article 68 :

8. **Vulnerability of undocumented and irregular migrant workers, including victims on violence, particularly sexual violence.** Undocumented and irregular migrant workers have become problems in State of employment, such as Malaysia and Saudi Arabia. They can't access basic services in their State of employment and easily to be convicted. Indonesia conducts repatriation program for migrant workers in which State of employment have strict policies on irregular migrant, but on the other hand migrant arrivals still can't be resisted.

Questions:

What are Government of Indonesia measures to address undocumented and irregular migrants, excluding repatriation program?

In repatriation program, does Government of Indonesia also provide recovery program, , such as social, economic and cultural reintegration, particularly for victim with disability?

How does Government of Indonesia ensure the protection, including recovery process for undocumented and irregular migrants who experience sexual violence and to bear the cost of child bearing and child rearing from rape cases?

Article 33 and 37:

9. **Dissemination, education and training for migrant workers.** Educational and training programs for migrant workers haven't effectively integrated rights of migrant workers in their curricula, including situation, social, cultural and legal context at State of employment, and protection mechanism.

Question: What are Government of Indonesia measures to ensure the dissemination of information of rights of migrant workers and members of their families and the awareness level of migrant workers about their rights?