



PERMANENT MISSION
OF THE REPUBLIC OF INDONESIA
TO THE UNITED NATIONS, WTO AND
INTERNATIONAL ORGANIZATIONS IN GENEVA

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The Permanent Mission of the Republic of Indonesia to the United Nations, World Trade Organization, and other International Organizations in Geneva presents its compliments to the Secretariat of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families in Geneva has the honor to submit to the latter the response by the Government of the Republic of Indonesia on the Concluding Observations of the Committee of the Protection of the Rights of All Migrant Workers and Members of Their Families on the Initial Report of Indonesia discussed at the Dialogue between the Government of Indonesia and the Committee on 5-6 September 2017.

The Mission kindly requests the Secretariat to convey to the Committee the above-mentioned response for the consideration of the Committee. The Mission has further the honor to request the Secretariat to upload the response by the Government of the Republic of Indonesia.

The Permanent Mission of the Republic of Indonesia to the United Nations, World Trade Organization and other International Organizations in Geneva avails itself of this opportunity to renew to the Secretariat of the Committee, the assurances of its highest consideration.

Geneva, 25 September 2017



Secretariat of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
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**COMMENTS BY THE GOVERNMENT OF INDONESIA ON
THE CONCLUDING OBSERVATIONS ON THE INITIAL REPORT OF INDONESIA
BY COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT
WORKERS AND MEMBERS OF THEIR FAMILIES**

The Government of Indonesia appreciates the comments and recommendations given by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW). However, the Government of Indonesia views that some of the concluding observations reflect misunderstanding and/or inadequate knowledge on the situation and the policies of the Government of Indonesia in relation to the protection of their migrant workers and members of their families.

These among others are:

Ratification of relevant instruments

- (1) Regarding the Committee's recommendation that the State party consider ratifying or acceding to the International Convention for the Protection of all Persons from Enforced Disappearance as soon as possible, Indonesia views that the said Convention does not have direct relation with the protection of migrant workers and their families.

Independent monitoring

- (2) In relation to the committee's recommendation to increase women's and ethnic minorities representation as commissioners of Indonesia's NHRI, Indonesia would like to emphasize that in line with the Paris Principles, Komnas HAM (Indonesia's NHRI) is an independent institution. The selection of their commissioners is carried out through open and transparent process, including vetting by the Parliament. They are nominated from across the country and examined independently by the public. The selection so far has taken into account representation of women, ethnic minorities and religious groups. One notable example is the representation from the Province of Papua, Mr. Natalius Pigai as member of Commissioners for period 2016-2017. Furthermore, for the period 2016-2017, 4 out of 13 commissioners are women.
- (3) The Committee's concern that the selection and appointment process lacks of clear, transparent and participatory process is therefore not correct. The Paris Principles states that "The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:
 - a. Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
 - b. Trends in philosophical or religious thought;

- c. Universities and qualified experts;
- d. Parliament;
- e. Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity)"

The status A given to Komnas HAM means that Komnas HAM has met the criteria provided by Paris Principles in relation to the appointment of its members as explained above.

- (4) This also further explains the concern by the Committee on inadequate level of funding and financial autonomy. The Paris Principles also mandates that *"The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence."*

The status A given by GANHRI reflects that this principle has been implemented by Komnas HAM.

Training on and dissemination of information about the Convention

- (5) With 255 million people living in its territory Indonesia has the largest population among all State Parties to the Convention. Indonesia is also the largest archipelagic country in the world, consisting more than 16000 islands and covering approximately an area of 2 million km². In this context, the frame used by the Committee to understand the complexity of implementation and dissemination of the Convention for other State Parties might not be applicable for Indonesian case. It is our strong opinion that the Committee has to take into consideration the uniqueness of context and background of every single State Party in its deliberations, in order to come up with credible judgment and assessment, as well as to provide realistic and implementable recommendations.
- (6) The Committee's assessment that the effort by Indonesia in providing training on the Convention to consular officials and labor attaches have been insufficient are not factual. The Government of Indonesia, particularly the Ministry of Foreign Affairs of Indonesia has provided training for junior diplomats, middle-career diplomat, senior diplomats to better protect Indonesia's migrant workers and members of their families. These training programs have been incorporated in the various diplomatic training courses. Education and training programs have also been given to officials working in the area of migration, including law enforcement and border authorities, judges, prosecutors and relevant consular officials.
- (7) The Government of Indonesia, in close cooperation with the International Organization for Migration (IOM), ILO, and UNODC has also annually hold basic trainings for victim identification and protection, including the prevention of forced labor.

- (8) As explained during the dialogue on 5-6 September 2017, the Government in close collaboration with civil society organizations have provided education and training programs for provincial and local officials and disseminates information on the rights of migrant workers enshrined in ICMW for local communities, particularly those who are interested to be migrant workers, as well as their families.

Participation of civil society

- (9) The information received by the Committee that civil society in Indonesia is not sufficiently included in or consulted on the implementation of the Convention is also not factual. During the Dialogue, the Committee heard explanation by the delegation that both central government and local government have engaged civil society in the implementation of the Convention, particularly in providing education and training to the migrant workers.
- (10) Level of civil societies involvement in the last 3 years have increased unprecedentedly. Elements of CSOs are involved not only in public awareness campaign and advocacy but also in policy formulation.

Non Discrimination

- (11) Indonesia's Constitution clearly states that the Government shall protect its citizens without discrimination, both abroad in the form of mentoring, sheltering and advocacy, as well as in the country in the form of shelter until repatriation to their families. This has been translated in all Indonesia's national legislations, including relevant laws and legislations in relation to the protection of migrant workers and members of their families.
- (12) 60% of Indonesian Migrant Workers are women, more than 95% of which works in domestic sector. Most of these workers are in irregular situation and approximately 90% of our resources in our mission abroad, in particular in destination countries is utilized to provide protection for Indonesian women migrant workers who are in irregular situation.

Right to an Effective Remedy

- (13) With regard to recommendations by the Committee on the right to an effective remedy, the Government of Indonesia has implemented all recommendations. While acknowledging that challenges remain, especially in destination countries, we are committed to protect our migrant workers and families, including their access to justice and rights to effective remedies.

Labour exploitation and other forms of ill-treatment, including child labour

- (14) The Committee's concern on the use of corporal punishment in the penal institutions of Aceh may affect migrant workers and members of their families are also not factual. As stated during dialogue, the corporal punishment is based on Syariah Law and only applies for moslem communities in the Province of Aceh. It would not be applied to foreign migrant workers in Aceh.

Due process, detention and equality before the Courts

- (15) Referring to the Committee's recommendations related to the due process, detention and equality before the Courts, as explained in our additional written response, Indonesia is not a destination country for refugees and asylum seekers. It is mainly a transit point. Indonesia is also not a party to the Refugee Convention of 1951. However, in practice, we adhere to the basic principles of that convention including *non-refoulement*. We are currently hosting more than 14000 refugees and asylum seekers in Indonesia. Our policy on providing temporary shelters for them is mostly based on humanitarian consideration. To enhance further coordination, particularly among Government Ministries and Institutions in dealing with refugees and asylum seekers, Presidential Decree no. 125/2016 was enacted early this year.
- (16) As an established practice, the granting of asylum seeker and refugee status is entirely under the authority of United Nations High Commission for Refugees (UNHCR). During their temporary stay in Indonesia, the Indonesian Government works closely with UNHCR and International Organization for Migration (IOM), particularly in providing basic needs for those refugees and asylum seekers.
- (17) Due to the absence of official shelters, refugees and asylum seekers are accommodated in various immigration detention centers and community housings, in close cooperation with the IOM. Therefore, it is a fact that being in Immigration's detention centers, those refugees and asylum seekers are temporarily sheltered and are not being detained while waiting for further process by the UNHCR and IOM, particularly to be resettled in countries of resettlement or to be repatriated to countries of origin. As Indonesia is not the destination country, local integration is currently not Indonesia's policy in this regard.
- (18) The current Indonesian policy does not relate or link the Convention on the Protection of the Rights of Migrant Workers and Their Families with the 1951 Refugee Convention, since the two issues fall under two different regime of international law.

Consular assistance

- (19) Indonesia views that the concerns the Committee have with regard to consular assistance is more appropriately addressed to receiving states, rather than to Indonesia.
- (20) Referring to Committee's assessment that the conditions in Indonesia mission's shelters are inadequate, including overcrowding, insufficient food, we wish to inform that Indonesia is the only state that provides shelter for its migrant workers abroad. The existence of facilities for non-diplomatic purposes inside the diplomatic premises are not common and not allowed by most of the receiving countries. However, taking into consideration the grievances of the situation, Indonesia has insisted to provide shelters for its

domestic workers inside its diplomatic premises despite receiving countries' concerns.

- (21) The expansion of shelter largely depends on the regulations of receiving states. In some cases, Indonesia is not even allowed to establish/expand its shelters due to the regulations of receiving states. Overcrowding that is occurred sometimes in some of our shelters are mostly caused by the influx of undocumented migrant workers.
- (22) Assessment that there is shortage of food supply in our shelters is not factual. We have sufficient budget in, both in our Mission and in the MOFA, to support the operating cost of our shelters. No shortage of food supply has been reported so far.
- (23) The Government provides not only free food and other basic necessities for all Indonesian migrant workers accommodated in the shelters, but also capacity building, especially on life skill.
- (24) With regard to the Committee's concern that the consular assistance provided by the Government of Indonesia is insufficient, we would like to reiterate what has been stated during the dialogue that the consular assistance provided by the Government of Indonesia is not only in accordance with the Vienna Convention on Consular Assistance but also beyond state obligation as stipulated in the Convention.
- (25) The Government of Indonesia also provided in-house (retainer) lawyers to assist Indonesian citizens facing problem abroad and ensure that they are going through due process of law. Currently there are 12 (twelve) Indonesian missions equipped with in-house/retainer lawyer: Riyadh, Jeddah, Manama, Doha, Dili, Damascus, Amman, Kuala Lumpur, Penang, Johor Bahru, Kuching, Kota Kinabalu, Tawau.
- (26) All the recommendations suggested by the Committee on consular assistance have been implemented by the Government of Indonesia. However, we believe and are committed to enhance our efforts in providing better consular assistance.

Right to transfer earnings and savings

- (27) The high cost of transferring remittance largely depends on the policies of the financial institutions in the receiving States while the access to formal financial channels also depends on the employer and banking policies in the receiving States.
- (28) The measures that the Government of Indonesia can ensure are to provide awareness and education on financial information for their migrant workers and their members of families and to improve bilateral agreements with the receiving States on financial matters. Moreover, to facilitate Indonesian migrant workers to transfer their remittance, some Indonesian State-Owned Banks have opened their offices in the receiving states, such as Hong Kong

(China), Taiwan, Qatar and Uni Emirate Arab. The authorization to open Bank office also depends on the regulations of the receiving states.

Domestic migrant workers

- (29) With regard to the Committee's recommendation to lift the ban on domestic migrant workers wishing to work to Middle East countries, we would like to inform the Committee that the Government of Indonesia has a set of criteria for the lifting of the ban. The criteria are formulated on the basis of the domestic migrant workers' security and safety. The spirit of our law is not to compromise the safety and security of our migrant workers with other consideration, especially commercial consideration of the recruitment agencies. The lifting of the ban should be a logical process with improvement of **security and protection** of the rights of foreign domestic workers in the destination countries in the Middle East. The Government of Indonesia will highly appreciate it if the Committee could provide us with its assessment on the later two parameters in the Middle East countries.

Recruitment Agencies

- (30) The Committee's recommendation for Indonesia to establish a recruitment system to reduce irregularities caused by private employment agencies is being implemented and is still ongoing towards the creation of a better system. This will also be regulated in the revised Law No 39/2004 on the Placement and Protection of Indonesian Migrant Workers.
- (31) As has been stated in our introductory statement, by the end of 2016, we have revoked 45 licenses and suspended the activity of 199 private employment agencies who violated our laws and regulations.

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