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

### Concluding observations on the initial report of Indonesia\*

1. The Committee considered the initial report of Indonesia (CMW/C/IDN/1) at its 363rd and 364th meetings (see CMW/C/SR.363 and 364), held on 5 and 6 September 2017, and adopted, at its 374th meeting, held on 13 September 2017, the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the initial report of the State party in response to the list of issues prior to reporting (CMW/C/IDN/Q/1/Add.1) and the additional information provided by the multisectoral delegation that was co-headed by Michael Tene, Ambassador and Deputy Permanent Representative of Indonesia to the United Nations Office and other international organizations in Geneva, and Alip Singgih Hermono, Secretary-General of the National Body for the Placement and Protection of Indonesian Migrant Workers, and comprised of several representatives of the Ministry of Manpower and Transmigration, the Ministry of Law and Human Rights, the Ministry of Foreign Affairs, the Ministry of Social Affairs, the Office of the President of Indonesia, the National Body for the Placement and Protection of Indonesian Migrant Workers, the Wonosobo Regency, and the Permanent Mission of Indonesia to the United Nations Office and other international organizations in Geneva.

3. The Committee appreciates the open and constructive dialogue held with the delegation, but notes with regret that the information provided was often general or incomplete, especially with regard to the practical implementation of the Convention in the State party.

4. The Committee recognizes that Indonesia, predominantly a country of origin, has made some progress in protecting the rights of its migrant workers abroad, although numerous challenges remain. The Committee notes that the State party is increasingly becoming a country of transit and destination and efforts are thus needed to ensure the protection of migrant workers' rights in the State party.

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\* Adopted by the Committee at its twenty-seventh session (4-13 September 2017).

5. The Committee notes that many countries in which Indonesian migrant workers are employed are not parties to the Convention, which may constitute an obstacle to migrant workers' enjoyment of their rights under the Convention.

## **B. Positive aspects**

6. The Committee notes with appreciation the ratification of or accession to the following instruments:

(a) The International Labour Organization (ILO) Maritime Labour Convention, as amended, 2006, in June 2017;

(b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in September 2012;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in September 2012;

(d) The Convention on the Rights of Persons with Disabilities, in November 2011;

(e) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, both supplementing the United Nations Convention against Transnational Organized Crime, in September 2009.

7. The Committee welcomes the adoption of the following legislative measures:

(a) Minister of Manpower and Transmigration Regulation No. 35/2015 on Amendment to Minister of Manpower and Transmigration Regulation No. 16/2015 on the Procedure of Utilization of Foreign Workers, in October 2015;

(b) Minister of Manpower and Transmigration Regulation No. 42/2015 on the Procedure of Granting, Extending, and Revoking the License to Conduct the Placement of Indonesian Migrant Workers, in 2015;

(c) Minister of Manpower and Transmigration Regulation No. PER.23/MEN/IX/2009 on Education and Job Training for Prospective Indonesian Migrant Workers, in September 2009;

(d) Law No. 21/2007 on the Eradication of the Criminal Act of Trafficking in Persons, in April 2007;

(e) Minister of Social Affairs Regulation No.102/HUK/2007 on Protection House and Trauma Centre, in 2007;

(f) Law No. 39/2004 on the Placement and Protection of Indonesian Migrant Workers, in October 2004, and its implementing regulations.

8. The Committee also welcomes the following institutional and policy measures:

(a) The adoption of the National Action Plan on Human Rights (2015-2019);

(b) The adoption of President Joko Widodo's Nawa Cita or Nine Government Priorities of 2015-2019, which aims, inter alia, at enhancing the quality of protection of Indonesian workers and legal entities abroad and protecting the rights and safety of migrant workers in the State party;

(c) The adoption of the Roadmap Towards a Child Labour-Free Indonesia in 2022, in December 2014;

(d) The establishment of the Task Force on Migrant Workers, in July 2011;

(e) The establishment of the National Anti-Trafficking in Persons Task Force, in November 2008.

9. The Committee appreciates the State party's leading role in regional consultative processes such as the Colombo Process, the Abu Dhabi Dialogue and the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, as well as the Global Forum on Migration and Development.

## **C. Principal subjects of concern and recommendations**

### **1. General measures of implementation (arts. 73 and 84)**

#### **Legislation and application**

10. The Committee notes with appreciation the multitude of laws, regulations, programmes and support structures for overseas Indonesian migrant workers, covering all stages of the migration process. It is, however, concerned about the absence of comprehensive legislation on migration designated to protect the rights of all migrant workers, including those in an irregular situation, the insufficient measures taken to ensure that the State party's legislation, in particular Law No. 6/2011 on Immigration, is in conformity with the Convention, as well as the delays in adopting the draft amendment of Law No. 39/2004 on the Placement and Protection of Indonesian Migrant Workers.

**11. The Committee recommends that the State party adopt comprehensive legislation on migration and take the steps necessary to ensure that its national laws, including Law No. 6/2011 on Immigration and the draft amendment of Law No. 39/2004 on the Placement and Protection of Indonesian Migrant Workers, are in line with the provisions of the Convention.**

#### **Articles 76 and 77**

**12. The Committee recommends that the State party consider making the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive and consider communications from States parties and individuals concerning violations of rights established by the Convention.**

#### **Ratification of relevant instruments**

**13. The Committee recommends 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.**

#### **Comprehensive policy and strategy**

14. The Committee is concerned that the State party has not yet adopted a comprehensive policy or strategy on migration.

**15. The Committee recommends that the State party develop a comprehensive, gender-responsive and human rights-compliant strategy that is supported by sufficient human, technical and financial resources and a monitoring mechanism for its implementation.**

#### **Coordination**

16. While noting with satisfaction the establishment of the National Body for the Placement and Protection of Indonesian Migrant Workers in 2006 and noting that seven government institutions/agencies have committed to further strengthen their synergy to

protect Indonesian migrant workers abroad, the Committee is concerned about the insufficient coordination among the various ministries and institutions at all levels of government for the implementation of the rights protected under the Convention.

17. **The Committee recommends that the State party step up its efforts to improve coordination among ministries and agencies at all levels of government for the effective implementation of the rights protected under the Convention, including by providing key institutions, in particular the National Body for the Placement and Protection of Indonesian Migrant Workers, the Directorate General of Immigration and the Directorate of the Protection of Indonesian Citizens and Legal Entities Abroad, with appropriate human, technical and financial resources as well as the mandate necessary to effectively coordinate comprehensive migration policies at all levels and to assess the impact of such policies and programmes on the rights of migrant workers and members of their families, both within the State party and abroad.**

#### **Data collection**

18. While noting the State party's efforts to provide data on its migrant workers abroad, the Committee is concerned that labour migration statistics are produced in a fragmented way and do not include migrant workers in an irregular situation, children of migrant workers remaining in the State party or migrant workers in the State party.

19. **The Committee recommends that the State party establish a centralized and comprehensive database covering all aspects of the Convention and ensure that data is collected on the status of migrant workers in the State party. It encourages the State party to compile information and statistics that are disaggregated by sex, age, nationality, marital and family status, reason for entry and departure from the country and the type of work performed, in order to effectively inform relevant policies and the application of the Convention in line with target 17.18 of the Sustainable Development Goals. The Committee also recommends that the State party build the capacity of public officials to improve the collection and analysis of accurate data on migration, including the situation of irregular migrant workers and victims of trafficking, and ensure the cooperation of its consular and diplomatic representations abroad in doing so. In cases where it is not possible to obtain precise information, such as those relating to migrant workers in an irregular situation, the Committee requests the State party to provide data based on studies or estimates.**

#### **Independent monitoring**

20. The Committee notes the fact that the National Human Rights Commission, which was recredited, in 2017, as an "A" status national human rights institution by the Global Alliance of National Human Rights Institutions, examines allegations of violations of rights of Indonesian migrant workers as well as foreign workers in Indonesia. It also notes the fact that the Commission, along with its partners, is responsible for monitoring the conditions in detention centres nationwide. The Committee, however, is concerned about:

- (a) The low representation of women and persons belonging to ethnic minorities as commissioners;
- (b) The lack of a clear, transparent and participatory selection and appointment process;
- (c) The inadequate level of funding and financial autonomy to deal adequately with complaints from migrant workers.

21. **The Committee recommends that the State party take all necessary measures to:**

- (a) Increase women's and ethnic minorities' representation as commissioners;
- (b) Ensure a clear, transparent and participatory selection and appointment process;
- (c) Provide adequate human, technical and financial resources to the Commission to enable it to effectively discharge its mandate, including dealing with complaints from migrant workers.

#### **Training on and dissemination of information about the Convention**

22. The Committee notes the various measures taken by the State party to disseminate information about the Convention and its provisions to a wide range of stakeholders and to provide training to consular officials and labour attachés on protecting the rights of migrant workers. The Committee is, however, concerned that efforts to provide training on the Convention and to disseminate information on the rights enshrined therein to all relevant stakeholders have been insufficient.

23. **The Committee recommends that the State party:**

- (a) **Develop education and training programmes on the rights of migrant workers and members of their families under the Convention, incorporating a gender perspective, and that such programmes be made available to all officials and persons working in the area of migration, in particular law enforcement and border authorities, judges, prosecutors and relevant consular officials, as well as national, provincial and local officials, social workers and civil society organizations;**
- (b) **Take further steps to ensure access by migrant workers to information and guidance on their rights under the Convention, in particular through pre-employment and pre-departure orientation programmes;**
- (c) **Strengthen its work with civil society organizations and the media to disseminate information about the Convention throughout the State party.**

#### **Participation of civil society**

24. The Committee is concerned about information received that civil society in the State party is not sufficiently included in or consulted on the implementation of the Convention.

25. **The Committee recommends that the State party consider more proactive ways of systematically involving civil society and non-governmental organizations in the implementation of the Convention, including in countries where Indonesian migrant workers are employed, and in negotiating and monitoring bilateral agreements, taking into account the provisions of the law.**

## **2. General principles (arts. 7 and 83)**

#### **Non-discrimination**

26. While noting the general constitutional and legislative prohibition on discrimination, the Committee is concerned that the national legislation does not cover all the prohibited grounds of discrimination included in articles 1 (1) and 7 of the Convention and does not specify the prohibition of both direct and indirect forms of discrimination. It is also concerned at reports of discriminatory treatment of migrant workers and members of their families, especially those in an irregular situation, by government officials dealing with labour affairs.

27. **The Committee recommends that the State party:**

(a) Amend its Constitution and/or national legislation to include a prohibition of direct and indirect discrimination on all the grounds enumerated in the Convention (arts. 1 (1) and 7), with respect to all aspects of employment and occupation and covering all workers, including domestic workers and workers in the informal sector;

(b) Take the necessary steps to ensure that all documented and undocumented migrant workers and members of their families within the territory, or subject to its jurisdiction, enjoy the rights provided in the Convention without any discrimination, in accordance with article 7 thereof.

**Right to an effective remedy**

28. While noting the adoption of Law No. 16/2011 on legal aid, the existence of various complaints mechanisms for Indonesian migrant workers abroad and the work of the National Body for the Placement and Protection of Indonesian Migrant Workers on conciliation and dispute settlement, the Committee is concerned about:

(a) The lack of information and adequate legal counsel for migrant workers on their rights and the remedies available in the State party's justice system;

(b) The ineffective handling of complaints owing, inter alia, to inadequate resources and training provided to staff, including training on complaint management skills and gender sensitivity;

(c) Complaints from poor and low-skilled migrant workers, particularly undocumented and domestic migrant workers, not being adequately addressed or such migrant workers being denied assistance;

(d) The fact that undocumented migrant workers may be unable to seek justice for violations of their rights for fear of being detained for illegal entry under Law No. 6/2011 on Immigration.

29. **The Committee recommends that the State party:**

(a) **Ensure that, in law and in practice, migrant workers and members of their families, including those in an irregular situation, have opportunities equal to those of nationals of the State party to file complaints and obtain effective redress in the courts when their rights under the Convention have been violated, including by removing obstacles to access justice for undocumented migrants, such as the risk of being detained under Law No. 6/2011 on Immigration;**

(b) **Intensify its efforts to inform migrant workers and members of their families, including those in an irregular situation, about the judicial and other remedies available to them in cases involving a violation of their rights under the Convention;**

(c) **Allocate additional and sufficient resources to the complaints mechanisms in order to enable them to deal more effectively with complaints, ensure regular capacity-building and skills enhancement for their staff, including on non-discrimination, and enhance legal assistance to help migrant workers pursue claims;**

(d) **Ensure that returned migrant workers whose rights have been violated obtain appropriate redress, including financial compensation, and that there are specific arrangements to handle complaints of sexual or gender-based violence.**

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

#### **Border management and migrants in transit**

30. The Committee is concerned that irregular entry into and exit from the State party is a criminal offence, punishable of imprisonment of up to one year under article 113 of Law No. 6/2011 on Immigration.

31. **The Committee recommends that the State party guarantee the right of both regular and irregular migrant workers to leave any State, including their own, and decriminalize irregular entry and exit. The Committee also recommends, in line with the Recommended Principles and Guidelines on Human Rights at International Borders, that the State party respect its human rights obligations at all border crossings, including the right to due process for all migrants regardless of their status, and ensure that border governance measures address and combat all forms of discrimination by State actors at international borders and that they comply with the principle of non-refoulement and the prohibition of arbitrary and collective expulsions.**

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

32. The Committee is concerned about:

(a) Reports that undocumented migrants working in the State party are frequently subjected to labour and sexual exploitation, including forced labour, particularly in the fisheries, construction, agriculture, mining, manufacturing, tourism and domestic work;

(b) The persistent use of corporal punishment, such as flogging and caning, in the penal institutions of Aceh, which may also affect migrant workers and members of their families;

(c) The large number of migrant children exposed to hazardous conditions or the worst forms of child labour working in mines, offshore fishing, construction sites and quarries, and as domestic or sex workers, their early dropout from school and their vulnerability to violence and exploitation, including physical, psychological and sexual abuse, child trafficking and forced labour.

33. **The Committee recommends that the State party:**

(a) **Provide adequate assistance, protection and rehabilitation, including psychosocial rehabilitation, to all migrant workers who are victims of sexual and labour exploitation, especially women and children;**

(b) **Amend legislation to criminalize forced labour, increase labour inspections and prosecute, punish and sanction persons or groups exploiting all migrant workers, both documented and undocumented, or subjecting them to forced labour and abuse, especially in the informal economy, in line with targets 8.7 and 16.2 of the Sustainable Development Goals;**

(c) **Review all its national and local criminal legislations, especially the 2005 Aceh Criminal Code, that authorize the use of corporal punishment as criminal sanctions, with a view to abolishing them immediately, and ensure that a legal aid mechanism exists to guarantee that any person, including migrant workers in the State party, has an enforceable right to a lawyer and other due process guarantees, so that all suspects have the possibility of defending themselves and of lodging complaints of abusive treatment in violation of national law and the Convention;**

(d) **Incorporate specific interventions regarding migrant children into the National Action Plan for the Elimination of Worst Forms of Child Labour (2013-2022).**

**Due process, detention and equality before the Courts**

34. The Committee is concerned that:

(a) Under article 85 of Law No. 6 on Immigration, undocumented migrants and asylum seekers can be arrested and placed in immigration detention centres for up to ten years without judicial review while deportation hearings are pending;

(b) Undocumented migrant children, including unaccompanied migrant children, are detained in immigration detention facilities for months or years, under squalid and violent conditions, frequently with unrelated adults;

(c) There are reports of immigration officials and guards' physical violence against detainees, including unaccompanied migrant children;

(d) The conditions in immigration detention facilities are extremely poor, including overcrowding, inadequate sanitation facilities and insufficient and bad quality food;

(e) There is a lack of information regarding due process guarantees, on an equal basis with nationals of the State party, for migrant workers and members of their families in criminal and administrative proceedings, including detention and expulsion.

35. **The Committee recommends that the State party:**

(a) **Amend Law No. 6 on Immigration to ensure that administrative detention is used as a measure of last resort only and for the shortest time possible, and that non-custodial alternatives are promoted, in line with the Committee's general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families;**

(b) **Expediently and completely cease the detention of children on the basis of their or their parents' immigration status, and allow children to remain with family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved, in accordance with their best interests and with their rights to liberty and family life;**

(c) **Stipulate strict behavioral rules for guards and officials at detention facilities and ensure that the facilities are regularly assessed by an independent monitoring body;**

(d) **Ensure that sufficient food, clean drinking water and sanitation, as well as health care are provided in immigration detention centers;**

(e) **Take the steps necessary to ensure that in administrative and judicial proceedings, including detention and expulsion proceedings, migrant workers and members of their families, particularly those in an irregular situation, are guaranteed due process on an equal basis with nationals of the State party before the courts and tribunals.**

**Consular assistance**

36. The Committee notes the various measures taken by the State party to strengthen its consular assistance, including the establishment of Citizen Service Units in 24 Indonesian diplomatic missions to better protect nationals working abroad. However, the Committee is concerned that:

(a) Indonesian migrant workers continue to suffer numerous violations of their rights in States of employment, including sexual and gender-based violence;



(b) Indonesian migrant workers have been jailed in the Gulf States for reasons such as leaving the host family and failing to fulfil contractual obligations and that there are reports of migrant workers who have been detained for several months, including on death row, with no visits from consular authorities or consular authorities not even being aware of the situation;

(c) According to information received, the consular assistance provided to migrant workers is insufficient, the conditions in Indonesian missions' shelters are inadequate, including overcrowding, insufficient food and restricted freedom of movement, and the responsible officers are not adequately trained;

(d) There is a lack of information on citizen services provided by Indonesian Missions to migrant workers abroad, and that their access has been mostly restricted to documented migrant workers;

(e) There is a lack of information on any mechanism in place to monitor the frequency of visits by consular staff to places of detention in countries of destination or follow-up action taken with regard to detained migrant workers.

**37. The Committee recommends that the State party:**

**(a) Make the proactive protection of migrant workers, including those in an irregular situation and those working in isolated conditions, a priority concern for its diplomatic missions in destination States;**

**(b) Strengthen the welfare services and consular assistance provided to the State party's migrant workers in destination States, including psychological counselling, legal counselling and adequate shelters for migrants in distress, and ensure that such services and assistance are gender-responsive and accessible to all migrant workers, including undocumented migrant workers;**

**(c) Ensure that consular and diplomatic missions are adequately staffed and that staff are properly trained on a human rights-based approach to dealing with all issues faced by migrant workers, including trafficking and other forms of exploitation, physical, psychological and sexual violence and abuse, arbitrary detention, ill-treatment and death penalty;**

**(d) Ensure that consular and diplomatic missions in States of employment act in line with the Vienna Convention on Consular Relations (1963) and develop specific policies that address prevention of and response to arbitrary detention and sexual and gender-based violence, including having female officers to deal with cases of sexual abuse, a local 24/7 hotline free of charge, a roster of competent local lawyers able to help the State party's migrant workers with legal issues, and that they conduct frequent visits to migrant detention centres.**

**Social security**

38. The Committee notes that the State party provides a social security framework through the Manpower Social Security Institution. It is, however, concerned about the lack of information on how bilateral and multilateral agreements concluded in the area of migration, including temporary labour programmes, guarantee social security for Indonesian migrant workers abroad.

**39. The Committee recommends that the State party ensure, through bilateral and multilateral social security agreements, that all migrant workers and members of their families have adequate social protection in countries of destination, and requests that the State party provide further information on the scope of additional coverage of the**

social security framework provided by the Manpower Social Security Institution in its next periodic report.

**Birth registration and nationality**

40. The Committee is concerned that a large number of childbirths in the State party have not been registered and that the lack of information, bureaucratic obstacles and financial barriers prevent Indonesian migrant workers abroad from registering births and obtaining identity documents for their children, in particular those born out of wedlock who are considered as illegitimate children, which may put them at risk of statelessness and deprive them of their rights.

41. **The Committee recommends that the State party:**

(a) **Ensure that all children of migrant workers born in the State party and children of Indonesian migrant workers born abroad are registered at birth and issued I identity documents, and that birth registration is facilitated and free of charge everywhere and under all circumstances, in line with target 16.9 of the Sustainable Development Goals;**

(b) **Raise awareness of the importance of birth registration among migrant workers and members of their families, especially those in an irregular situation;**

(c) **Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

**4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36-56)**

**Pre-departure and the right to be informed**

42. The Committee notes with appreciation the State party's efforts to strengthen the provision of pre-departure training and information to prospective migrant workers, including the 24/7 hotline, One-Stop Integrated Service Centres and Indonesian Missions' welcoming programmes. However, the Committee is concerned that:

(a) Some prospective migrant workers were reportedly unaware of such training or viewed them as insufficient;

(b) There is a lack of statistical data on pre-departure programmes and a lack of information on how the State party ensures in practice that private agencies provide adequate pre-departure information to migrant workers;

(c) That pre-departure training does not sufficiently inform migrant workers about their rights under the Convention and in countries of destination or about access to justice and available complaints mechanisms.

43. **The Committee recommends that the State party:**

(a) **Enhance and improve pre-departure training and information in accordance with the Convention and in a gender-responsive manner in order to promote informed decision-making and enhance the skill levels of prospective migrant workers, including language skills and general education levels;**

(b) **Empower migrant workers to know their rights and how to claim them, including by providing them with information on fair recruitment, decent work standards, available social protection, financial matters, the local culture and lifestyle, as well as important legislation in the destination country, making it clear where there**

are different standards for women, as well as contact information for labour attachés and welfare officers in the States of employment;

(c) **Ensure that migrant workers are properly informed about the migration process and, in particular, ensure that employment contracts signed by migrant workers are always written in a language that they can read and understand.**

#### **Right to transfer earnings and savings**

44. The Committee notes the various measures taken by the State party to facilitate remittances. However, the Committee is concerned about the high cost of transferring remittances and the limited access to formal financial channels.

45. **The Committee recommends that the State party continue to take measures to reduce the cost of sending and receiving funds, taking into account the principle of gender equality in line with target 10 (c) of the Sustainable Development Goals, and facilitate access to safe and affordable remittance transfer systems, the productive use of remittances and their low cost transmission to rural regions.**

### **5. Promotion of sound, equitable, humane and lawful conditions in connection with the international migration of workers and members of their families (arts. 64-71)**

#### **Children in situations of international migration**

46. The Committee notes the State party's efforts to secure the welfare of the children of migrant workers in the State party and children of Indonesian migrant workers that remain in the State party whose parents have gone abroad, including through the establishment of Social Safe Houses for Children and other initiatives. However, the Committee is concerned about the vulnerability of Indonesian children that remain in the State party and whose parents have gone abroad regarding disruption of education, neglect, abandonment, abuse and exploitation, including sexual abuse of girls, alcohol abuse, child labour in and outside the home, early marriage and trafficking.

47. **The Committee recommends that the State party:**

(a) **Conduct nationwide research on children of migrant workers in the State party and on children of Indonesian migrant workers that remain in the State party and whose parents have gone abroad to establish the demographic profile of this population in order to guide its policies and programmes;**

(b) **Adopt a comprehensive strategy to promote and protect the rights of children and families of Indonesian workers, in particular through education, entrepreneurial, training and community welfare programmes, and further its cooperation to that effect with civil society actors in the State party and in the country of origin.**

#### **International cooperation with countries of destination**

48. While noting that the State party has signed several memorandums of understanding and entered into a number of bilateral agreements, the Committee is concerned that:

(a) Indonesian migrant workers continue to suffer numerous violations of their rights in States of employment, including being deprived of the right to leave their place of work, non-payment of salaries, having their passports confiscated, harassment, violence, threats, inadequate living conditions, difficult access to health care and in some cases even torture;

(b) Most of the memorandums of understanding and bilateral agreements do not cover adequately the provisions contained in the Convention.

49. **The Committee recommends that the State party:**

(a) **Actively promote the ratification of the Convention by destination States and enhance its cooperation with those States in order to prevent violations such as contract substitution, confiscation of passports, non-payment of wages, abuse and exploitation;**

(b) **Continue through the Colombo Process and the Abu Dhabi Dialogue to enhance cooperation among countries of origin, seeking fair recruitment standards and a binding, unified work contract, based on international human rights and labour standards, that sets out the job description, agreed salary, working and living conditions, effective recourse and remedies;**

(c) **Address the situation of migrant workers who are victims of the *kafalah* system, in particular in the Gulf States, and consider raising the issue individually and collectively, with a view to encouraging the governments concerned to abolish that system;**

(d) **Promote gender-responsive bilateral, regional and international cooperation in the field of migration with destination States;**

(e) **Negotiate with all destination States binding bilateral agreements that are gender-responsive and non-discriminatory and provide for protection of migrant workers' human rights, including the right to social security;**

(f) **Monitor the enforcement of bilateral agreements and ensure that all such agreements and memorandums of understanding signed with destination States are made public, that they are transparent and that their implementation is monitored effectively.**

#### **Domestic migrant workers**

50. While noting the adoption of Minister of Manpower and Transmigration Regulation No. 2/2015 on the Protection of Domestic Workers, the Committee is concerned that:

(a) Indonesian domestic migrant workers frequently face abuse, harassment and exploitation in the workplace, including servitude, sexual harassment, physical mistreatment, and the practice of withholding payments;

(b) Domestic workers are excluded from the protections afforded to other workers by Law No. 13/2003 on Manpower, and that the State party has not yet adopted the Bill on domestic workers or ratified the ILO Domestic Workers Convention, 2011 (No. 189);

(c) The current ban, imposed through Minister of Manpower Regulation No. 260/2015 on the Banning of Placement of Indonesian Migrant Workers to Individual Users in the Middle East Region, on domestic migrant workers wishing to travel to Middle East countries for work, discriminates against Indonesian women and puts them at heightened risk of trafficking and other forms of exploitation.

51. **In the light of its general comment No. 1 (2011) on domestic migrant workers, the Committee recommends that the State party:**

(a) **Strengthen its cooperation with States of employment on frameworks and agreements for the protection of the rights of domestic migrant workers, including by ensuring that bilateral/regional agreements relating to labour migration comply with and refer to international human rights law and are legally binding at the level of international law, and that all such agreements specifically provide inclusion of**

healthcare and social protection for migrant workers, and contain specific provisions for workers in vulnerable situations, are gender-responsive and include gender-sensitive monitoring mechanisms;

(b) Include in all bilateral/regional agreements standard and unified employment contracts for domestic workers with fair, full and clear conditions and labour standards that are legally enforceable in the State party as well as in the State of employment;

(c) Establish a reference wage for domestic workers that reflects their skills and experience, which should apply to all workers in all destination States and be included in bilateral/regional agreements;

(d) Ensure that abused domestic migrant workers seeking help from its diplomatic missions abroad are provided with shelter, legal assistance, medical and psychosocial care and interpreters;

(e) Adopt, within a clear time frame, the Bill on domestic workers and ensure that it includes provisions related to the protection of the rights of domestic migrant workers abroad;

(f) Conduct awareness-raising campaigns through the media and public education programmes on the situation of domestic migrant workers and their rights; support unions working with domestic migrant workers and strengthen labour-inspection mechanisms;

(g) Create a mechanism whereby domestic migrant workers may lodge complaints of abuse regarding unfair labour practices in the domestic sphere and further develop support services and shelters for victims of abuse in the domestic sphere;

(h) Ratify the ILO Domestic Workers Convention, 2011 (No. 189);

(i) Lift the ban on domestic migrant workers wishing to travel to Middle East countries for work and consider adopting and implementing alternative non-discriminatory measures to effectively protect the rights of domestic migrant workers, in line with UN Women Recommendations for addressing women's human rights in the global compact for safe, orderly and regular migration.

#### **Recruitment agencies**

52. The Committee notes the various legislative and other measures taken by the State party to strengthen the regulation and monitoring of recruitment agencies. The Committee is, however, concerned about:

(a) Recruitment agencies in the State party are given extensive powers in relation to the signing of contracts, pre-departure training, grievance handling, conciliation and repatriation, despite the fact that they are insufficiently monitored and regulated;

(b) Malpractice in the State party's recruitment system reportedly includes forging documents, charging exorbitant unauthorized fees for services, contract substitution, obtaining signatures on blank or incomplete contract forms, debt bondage, recruiting without a valid licence, sending unregistered workers through fraudulent means, processing workers without proper documentation and recruiting children;

(c) The limited action taken to punish agents or recruiting agencies involved in unlawful and fraudulent practices, including reportedly providing forged training certificates;

(d) Contracts signed at recruitment agencies are not always translated into a language that the migrant worker understands, and migrant workers do not usually receive a

copy of the contract or information on how to complain if the terms of the contract are not upheld;

(e) Prospective migrant workers reportedly find the recruitment processes cumbersome and time-consuming, which drives the majority of the State party's potential migrants to rely on informal networks for information and placement, leading to many of them falling prey to unscrupulous recruitment agencies and moneylenders who provide loans at high interest rates.

53. **The Committee recommends that the State party:**

(a) **Establish a recruitment system subject to public administration to reduce the irregularities caused by private employment agencies;**

(b) **Enhance the regulation and monitoring of recruitment agencies by putting in place a comprehensive, gender-responsive, fair recruitment policy with high standards; ensuring that recruitment agencies improve the services they offer; holding them accountable for the non-execution of their duties; investigating and punishing illegal practices by recruiters, with a view to punishing those involved in exploitative practices; regulating irregular subagents and brokers and sanctioning unlicensed agencies; and regularly updating the recruitment agency blacklist and making it public;**

(c) **Oblige recruitment agencies to assign upon request women staff members to manage the recruitment of women domestic workers and make licensed recruitment agencies more easily accessible in order to reduce informal networks and reliance on brokers, including in rural districts;**

(d) **Work together with destination States to ensure that illegal recruitment fees are not charged and that employment contracts signed in the State party are not replaced upon arrival by less favourable ones;**

(e) **Abolish the practice of having to pay a motivational fee prior to leaving the State party, which may lead to debt bondage, making it difficult or impossible for a migrant worker to leave an abusive employer, and adopt a "no placement fee" policy for persons intending to work abroad;**

(f) **Ratify the ILO Private Employment Agencies Convention, 1997 (No. 181).**

#### **Return and reintegration**

54. While noting the adoption of a number of resettlement and reintegration programmes, including the Indonesian Business Empowerment for Former Indonesian Labour Migrants Programme, the Committee is concerned that:

(a) Some migrant worker returnees were reportedly unaware of such programmes or viewed them as insufficient, most importantly for those who may have experienced abuse abroad or are in need of medical care;

(b) Women migrant workers often face family and social reintegration problems upon their return, including being stigmatized as lacking in moral virtue.

55. **The Committee recommends that the State party:**

(a) **Facilitate the repatriation of all migrant workers in need, including those who have escaped from abusive employers or have ended up in an irregular situation, in detention or elsewhere;**

(b) **Enhance the gender-responsive services provided for the reintegration of returned migrant workers, including psychosocial services and livelihood**

opportunities, particularly providing response services for victims of sexual and gender-based violence and those who have experienced abuse during the migration process;

(c) **Conduct awareness-raising programmes to highlight the contribution of women migrant workers and combat the stigmatization of returning women migrant workers.**

### **Trafficking in persons**

56. The Committee notes with satisfaction the adoption of the National Action Plan to Combat Trafficking in Persons (2015-2019) and the increase in the number of prosecutions for trafficking offences. However, the Committee is concerned that:

(a) Law No. 21/2007 on the Eradication of the Criminal Act of Trafficking in Persons is not effectively implemented and the Anti-Trafficking in Persons Task Force still does not cover many districts;

(b) There is a lack of effective measures to protect victims and to provide them with effective remedies, including compensation and rehabilitation;

(c) Although rates of prosecution have risen in recent times, they remain low and that perpetrators are not adequately punished;

(d) Victims of trafficking are not adequately protected from being prosecuted, detained or punished for illegally entering or residing in the State party, or for the activities in which they were involved as a direct consequence of their situation as trafficked persons;

(e) Trafficking-related corruption and complicity at all levels of government remains pervasive.

57. **The Committee recommends that the State party:**

(a) **Ensure the effective implementation of Law No. 21/2007 on the Eradication of the Criminal Act of Trafficking in Persons, including by improving and extending the scope of the Anti-Trafficking in Persons Task Force to cover the entire territory of the State party;**

(b) **Systematically, transparently, impartially and vigorously investigate allegations of trafficking in persons, prosecute and, if convicted, punish those responsible and provide compensation to victims;**

(c) **Continue its efforts to prevent, suppress and punish trafficking in persons, including at the regional level and in cooperation with neighbouring countries, and through enhanced inter-agency cooperation on human trafficking, in line with target 5.2 of the Sustainable Development Goals;**

(d) **Increase its efforts to identify and provide protection and assistance to all victims of human trafficking, in particular by providing gender-sensitive shelters, medical care and psychosocial and other support to assist in their reintegration into society;**

(e) **Take measures to protect victims of human trafficking from prosecution, detention or punishment for activities in which they were involved as a direct consequence of their situation as trafficked persons;**

(f) **Take proactive measures to investigate and prosecute government officials suspected of trafficking-related corruption and complicity in trafficking offences;**

(g) Strengthen gender-responsive training for law enforcement officials, judges, prosecutors, labour inspectors, local governments and village administrators, teachers, health-care workers and the staff of its embassies and consulates and disseminate more widely information on trafficking in persons and on assistance to victims.

**6. Dissemination and follow-up**

**Dissemination**

58. The Committee requests the State party to ensure the timely dissemination of the present concluding observations, in the official language of the State party, to the relevant State institutions at all levels, including to government ministries, the legislature, the judiciary and relevant local authorities, as well as to non-governmental organizations and other members of civil society.

**Technical assistance**

59. The Committee recommends that the State party avail itself of international assistance for the implementation of the recommendations contained in the present concluding observations in line with the 2030 Agenda for Sustainable Development.

**Follow-up to concluding observations**

60. The Committee requests the State party to provide, within two years (that is, by 1 October 2019), written information on the implementation of the recommendations contained in paragraphs 11, 35 (a), 41 (a) and 53 (a) above.

**Next periodic report**

61. The Committee requests the State party to submit its second periodic report by 1 October 2022. In so doing, the State party may wish to follow the simplified reporting procedure. The Committee draws the State party's attention to its harmonized treaty-specific guidelines (HRI/GEN.2/Rev.6).

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