



# Economic and Social Council

Distr.: General  
5 April 2022

Original: English  
English, French and Spanish  
only

## Committee on Economic, Social and Cultural Rights

### List of issues in relation to the second periodic report of Indonesia\*

#### A. General information

1. Please provide information on cases where Covenant rights have been applied or invoked by the courts, including examples thereof; and on training for judicial officials and legal professionals on the justiciability of economic, social and cultural rights. Please also clarify whether the judicial and executive reviews, mentioned in the State party's report,<sup>1</sup> take into account the Covenant, and indicate cases where legislation was revoked for non-compliance with the Covenant. In addition, please specify the extent to which Ministry of Law and Human Rights Regulation No. 24/2017 on Guidelines for Human Rights Substance in the Formation of Legislation<sup>2</sup> has contributed to harmonizing the by-laws with the Covenant.

2. In light of the adoption of the mid-term national development plans,<sup>3</sup> please indicate the steps taken to ensure that the obligations under the Covenant are taken into consideration in these development plans as well as in preparing any economic or development policies or programmes. In particular, please indicate any policy, institutional or other measures taken to ensure that the economic and development policies and plans are not formulated or implemented at the expense of protection of Covenant rights, especially as regards marginalized and disadvantaged individuals and groups.

3. Please provide information on the steps taken to implement the ruling of the Constitutional Court on 25 November 2021 in relation to Law No. 11 of 2020 on Job Creation. In light of information provided in the State party's report,<sup>4</sup> please indicate to what extent provisions of this law strengthen the protection of the environment and the rights of workers guaranteed in articles 6 to 9 of the Covenant, and any steps taken to address the concerns raised about the adverse impact of the law on the rights of workers, particularly regarding termination of employment, application of the minimum wage and trade union activities, and on the environment.

4. In light of the measures taken by the State party<sup>5</sup> to address persisting regional disparities, particularly affecting remote islands and the Provinces of Aceh, Papua and West Papua, please provide information on:

(a) The progress achieved through those measures, indicating developments in key indicators of economic, social and cultural rights, as well as the challenges faced and the measures taken to address them;

\* Adopted by the pre-sessional working group at its seventieth session (7–11 March 2022).

<sup>1</sup> [E/C.12/IDN/2](#), para. 15.

<sup>2</sup> Ibid., para. 13.

<sup>3</sup> Rencana Pembangunan Jangka Menengah Nasional.

<sup>4</sup> [E/C.12/IDN/2](#), paras. 81–85.

<sup>5</sup> Ibid., paras. 43–61.



(b) The level of disparities in the national and regional budgets allocated to the regions in public service areas such as social security, housing, water and sanitation, health care, education and information technology infrastructure, and the measures taken to ensure equitable budget allocation across the regions.

5. Please provide information on any measures taken:

(a) To explicitly provide the National Commission on Human Rights with a mandate to deal with economic, social and cultural rights and to enhance compliance with its recommendations by relevant public authorities;

(b) To ensure that the National Commission on Violence against Women independently administers its resources, as recommended by the Committee, and to provide it with sufficient resources to address effectively the increased and large number of complaints filed with it.

6. Please provide information on the measures taken to prevent and address the intimidation, violence and attacks against human rights defenders, especially those advocating for the rights of indigenous peoples and working on environmental and land-related issues; and on such cases, including the number of cases reported, investigated and prosecuted and the sanctions imposed on perpetrators. Please also indicate how effective the enforcement of article 66 of Law No. 32/2009 on Environmental Protection and Management is to this end. Furthermore, please provide information on the cases in which human rights defenders have been sanctioned under Law No. 19/2016 on Electronic Information and Transactions and on the status of the review of this law.

7. Please provide information on:

(a) The progress made in meeting nationally determined contributions for reducing emissions that the State party has set under the Paris Agreement, as well as in preventing and addressing the adverse effects of climate change on the enjoyment of economic, social and cultural rights, particularly by disadvantaged and marginalized individuals and groups;

(b) The measures taken to address the high risk of climate and natural disaster due to the overexploitation of land and other natural resources for logging and mining operations and palm oil plantations, and the effectiveness thereof;

(c) The measures taken to ensure that persons who are internally displaced due to natural disasters continue to enjoy their Covenant rights, while being displaced.

8. Please provide information on the legislative and policy framework to ensure that public and private business entities exercise human rights due diligence throughout their operations and are held accountable for violations of the rights under the Covenant. In particular, please indicate the progress made on the national action plan on business and human rights being developed in accordance with the Guiding Principles on Business and Human Rights, and at what stage it will be adopted. Please clarify whether the tools developed by the State party, including the Norms, Standards, Procedures and Criteria, and the business and human rights due diligence indicator (PRISMA), incorporate the obligations under the Covenant; and how effective they are. Please also provide information on cases brought by persons or groups affected by business operations and on the remedies provided to them.

## **B. Issues relating to the general provisions of the Covenant (arts. 1–5)**

### **Right to freely dispose of natural wealth and resources (art. 1 (2))**

9. Please clarify the status of the draft law on Masyarakat Hukum Adat. In addition, please provide information on:

(a) The measures taken to ensure that the legislative framework provides for legal recognition of indigenous peoples, their customary lands and forests, and their rights in line with international human rights norms, and to remove procedural obstacles to claim their rights;

(b) Any mechanisms put in place to ensure that indigenous peoples participate in the formulation and implementation of legislation, policies and projects that affect them and that their free, prior and informed consent is obtained; and the sanctions imposed in case of non-compliance;

(c) The measures taken to ensure that indigenous peoples continue their traditional way of life and livelihood, in case of concession of indigenous lands and forests.

#### **Maximum available resources (art. 2 (1))**

10. Please provide information on the evolution over the past 10 years of:

(a) The proportion of the population living below the nationally defined poverty line, before and after taxes and transfers;

(b) The levels of inequality, defined both as the ratio between the total income accruing to the richest decile of the population and the total income of the poorest 40 per cent, before and after taxes and transfers; and as the ratio between the assets owned by the richest decile of the population and the assets owned by the poorest 50 per cent;

(c) The proportion of public revenue that is generated through taxes;

(d) Tax rates levied on corporate profits and on personal income, the value added tax rate (exclusive of value added tax on certain items, including luxury items), and the percentage of total revenue that is generated from personal income tax collected from the richest 10 per cent of the population;

(e) Public expenditure as a percentage of gross domestic product and, within total public expenditure, the proportion of the public budget that is allocated to social spending, including social security, food, water and sanitation, housing, health and education;

(f) Any fiscal policy adopted to respond to the coronavirus disease (COVID-19) pandemic.

#### **Non-discrimination (art. 2 (2))**

11. Please provide information on:

(a) The steps taken to implement the Committee's previous recommendations with respect to non-discrimination legislation;

(b) The progress made in reviewing and repealing provisions in local laws and by-laws that contain discriminatory provisions, particularly based on sex, sexual orientation, gender identity and religion;

(c) The cases of discrimination in the enjoyment of economic, social and cultural rights, filed with relevant authorities, as regards the main grounds and areas of discrimination, the penalties imposed on perpetrators, and the remedies provided to victims.

#### **Equal rights of men and women (art. 3)**

12. Please provide information on the measures taken, and the results thereof, to improve the labour market participation and employment of women, to increase decent job opportunities for women, and to close the gender pay gap, and include relevant statistical data. Please also elaborate on the steps taken to repeal gender-discriminatory legal provisions and practices which prevent women from accessing employment, land, livelihoods and economic opportunities, and social security and welfare programmes. Furthermore, please provide information on the measures taken, and their impact, to protect women from discrimination and violation of their rights in the workplace, including with regard to dismissal and working conditions during pregnancy, and sexual harassment, and clarify the status of the draft ministerial regulation on prevention of violence and harassment.

## C. Issues relating to the specific provisions of the Covenant (arts. 6–15)

### Right to work (art. 6)

13. Please provide information on:

(a) The legislative and policy measures taken to formalize the informal economy and the employment of workers therein; and the progress achieved in extending the protection guaranteed in Law No. 13 of 2003 on Manpower and its implementing regulations to those in the informal economy and in non-traditional forms of employment, including domestic workers, online platform-based drivers and freelancers;

(b) The measures taken, and their results, to address the high number of young people who are not in employment, education or training;

(c) The measures taken to address the widening skills mismatch in the labour market, coupled with the reportedly increased share of undereducated workers, and to create decent job opportunities amidst the change in the nature of work.

### Right to just and favourable conditions of work (art. 7)

14. Please provide information on the situations of wage arrears and unilateral layoffs, especially during the pandemic; and the steps taken, and their effectiveness, to address them. In light of information provided by the State party,<sup>6</sup> please also provide information on minimum wages, including on the coverage of the minimum wage, and the amounts; and on the measures taken to expand the coverage of the minimum wage and to ensure that minimum wages provide workers and their families with a decent living. Furthermore, please clarify whether the principle of equal pay for work of equal value is explicitly stipulated in labour legislation and how this principle is operationalized and applied in practice.

15. Please provide information on:

(a) Annual statistical data, disaggregated by sex, age, industry and form of employment, on occupational accidents and diseases during the reporting period; and the steps taken to prevent occupational accidents and diseases and to ensure that victims get remedies and compensation commensurate with the severity of such accidents and diseases;

(b) The progress achieved in strengthening the labour inspection system, including with regard to financial and human resources, the professional training of labour inspectors and the coordination of decentralized inspection activities;

(c) The labour inspections carried out, including annual statistical data, disaggregated by industry, sector and region, and the sanctions imposed in case of non-compliance; and the main areas of concern identified through labour inspections and complaints and the measures taken to address them.

16. Please provide information on:

(a) The concrete steps taken, and their impact, to ensure government protection of migrant workers from exploitation by recruitment agencies, including domestic workers and fishing vessel crews, including placement fees, the practice of allowance money, and confiscation of personal and travel documents;

(b) The effectiveness of Law No. 18/2017 on the Protection of Indonesian Migrant Workers and other legislative measures to this end, as indicated in the State party's report;<sup>7</sup> and the steps taken to address criticisms that Decree No. 214/2021, of the Head of the Indonesian Migrant Workers Protection Agency, on Implementation Guidelines for Exemption from the Placement Fee of Indonesian Migrant Workers, contradicts the law relating to placement fees;

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<sup>6</sup> Ibid., paras. 81–88.

<sup>7</sup> Ibid., paras. 97–102.

(c) Any measures taken to protect and support Indonesian migrant workers abroad during the pandemic, especially those whose contracts have been unilaterally terminated and those who are stranded and rendered undocumented in the countries of employment;

(d) The cooperation with countries of employment to protect Indonesian migrant workers, as well as any initiatives or policies undertaken by the State party, at the regional and international level, to prevent trafficking in human beings.

#### **Trade union rights (art. 8)**

17. Please indicate any steps taken to guarantee the right of civil servants to form and organize trade unions of their choice, pursuant to section 44 of Act No. 21/2000 concerning trade unions, and whether the Indonesian Civil Service Corps has the same powers and functions as a trade union. Please also indicate any steps taken to address legal restrictions on the exercise of the right to form and join a trade union, including discrimination, refusal to officially register trade unions, or the dissolution or suspension of trade unions based on uncertain criteria. Furthermore, please report on the measures taken to ensure that workers in the informal economy and in non-traditional forms of employment, including platform-based workers and those working in export processing zones, can exercise trade union rights.

18. Please report on any steps taken to review labour legislation with a view to addressing the obstacles to effective exercise of the right to strike, including the excessive membership and procedural requirements and the unduly long list of essential services. Please provide information on the cases in which unionists have been penalized under sections 160 and 335 of the Penal Code. Please also provide information on investigations carried out into reports of harassment, intimidation and excessive use of force against workers by police and military officials and non-State actors during the peaceful protests and strikes, especially around the passage of Law No. 11/2020 on Job Creation, and indicate the remedies provided to workers victimized by such violence, the sanctions imposed on those responsible, and the measures to ensure non-recurrence.

#### **Right to social security (art. 9)**

19. Please provide information on:

(a) The coverage rates, in the formal and the informal sectors, of the four programmes under the Employees' Social Security System<sup>8</sup> over the past five years, and the challenges faced in expanding the coverage of the programmes to the informal economy sector and the measures taken to overcome these;

(b) The social assistance system, including the Family Hope Programme,<sup>9</sup> as regards the eligibility, the amounts and their adequacy, the uptake rates, and the groups or individuals left out of the programmes; and the measures taken to increase budget allocation to the system;

(c) Any new social protection programmes introduced, or existing ones expanded, to respond to the economic fallout from the COVID-19 pandemic, and their effectiveness, especially for the most disadvantaged and marginalized;

(d) Any steps taken to establish the unemployment insurance scheme.

#### **Protection of the family and children (art. 10)**

20. Please provide information on:

(a) The research on the implementation of the Marriage Law<sup>10</sup> including the findings and the steps taken to follow up on the findings, and the extent to which the measures taken to ensure that all children, including those in child marriage, enjoy the rights enshrined in the Covenant, particularly in relation to their health and education;

<sup>8</sup> Jaminan Sosial Tenaga Kerja.

<sup>9</sup> Program Keluarga Harapan.

<sup>10</sup> E/C.12/IDN/2, para. 134.

(b) The prevalence of child labour and of children engaged in worst forms of child labour; and any targeted inspections or investigations carried out, especially in the agricultural, fishing and footwear industries and in domestic work;

(c) The progress made in prosecuting persons employing children engaged in the worst forms of child labour.

#### **Right to an adequate standard of living (art. 11)**

21. Please provide information on:

(a) The progress achieved through the implementation of the national action plan on food and nutrition and other programmes to reduce the incidence of hunger and malnutrition, particularly during the pandemic;

(b) The measures taken to protect the rights of small-scale farmers, particularly relating to food and nutrition, livelihoods, participation in decision-making processes, and access to and use of land, and particularly in the context of implementing the food estate programme;

(c) The measures taken to protect the means of subsistence of small-scale fishers, which are under threat due to land reclamation projects, illegal fishing, pollution and extreme weather events.

22. Please provide information on the measures taken, and the effectiveness thereof, to address the legal and procedural difficulties faced by smallholders, and disadvantaged and marginalized individuals and groups, in obtaining land tenure and in resolving land disputes. Please specify the progress made through the agrarian reform acceleration programme and social forestry in legalizing the land tenure of the above-mentioned individuals and groups and in preventing land grabbing and the concentration of land ownership. Please provide information on the enforcement of the moratorium on the issuance of new licences for palm oil plantations and clarify the status of extension of the moratorium.

23. Please provide information on the measures taken to provide, including through international assistance and cooperation, persons internally displaced due to armed conflicts in West Papua with adequate housing and with access to food, health care and education. Please also indicate the steps taken to facilitate a safe return to their homes and to provide them with durable solutions.

#### **Right to physical and mental health (art. 12)**

24. Please provide information on:

(a) The measures taken, and the results thereof, to address the shortcomings of the health-care system, such as the limited coverage and scope of the universal health insurance, the low level of budget allocation to the health sector and the high level of out-of-pocket expenditure, and the shortage and unequal distribution of medical professionals and facilities;

(b) The framework legislation and policy on mental health, and the measures taken to improve the availability, accessibility and quality of mental health services;

(c) The measures taken to ensure that COVID-19 vaccines and related treatments are available to all persons free of charge and to deliver health-care services with minimal disruption during the pandemic.

25. Please provide information on:

(a) The steps taken to review the legislative framework on abortion and the right to sexual and productive health, and to improve access to sexual and reproductive health education and services, including contraceptives;

(b) The legislative and other measures taken to address the high level of tobacco addiction, particularly among children;

(c) The steps taken to review the legislative and policy framework on drugs; the progress made in improving the availability, accessibility and quality of harm reduction programmes and in making specialized health-care services available to drug users; and the

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measures taken to curb the high prevalence of HIV and hepatitis C infection among those who inject drugs and to address discrimination faced by drug users in accessing health-care services.

26. Please provide information on the progress achieved in reducing and preventing transboundary haze and protecting biodiversity, as well as on any policies or mechanisms initiated by the State party to address these issues at the regional and international levels.

**Right to education (arts. 13–14)**

27. Please provide information on:

(a) The situation of preschool education in the State party, and on the measures taken to improve the availability, accessibility and quality of preschool education;

(b) The measures taken to improve school attendance, the quality of education and academic achievement at the primary, secondary and tertiary levels of education, and the results thereof, including relevant annual statistical data, disaggregated by level of education, sex and region;

(c) The measures taken to ensure equal access to education of quality, especially for the disadvantaged and marginalized, during the pandemic.

**Cultural rights (art. 15)**

28. Please provide information on the measures taken to address the widening inequalities in accessing public services, including employment services, social security, health-care services and education, due to the digital divide and digital illiteracy. Please also provide information on the measures taken to ensure access, without discrimination, to the benefits of scientific progress and its applications – for everyone, especially for women, persons with disabilities, persons living in remote areas and persons living in poverty.

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