



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

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families Twenty-seventh session

Summary record (partial)* of the 364th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 6 September 2017, at 10 a.m.

Chair: Mr. Brillantes

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 73 of the Convention *(continued)*

Initial report of Indonesia (continued) (CMW/C/IDN/1; CMW/C/IDN/QPR/1)

1. *At the invitation of the Chair, the delegation of Indonesia took places at the Committee table.*
2. **Mr. Komar** (Indonesia) said that the delegation had duly noted the Committee's observations about gender balance among its members and would take them into account for future meetings. As a party to the Convention on the Elimination of All Forms of Discrimination against Women, Indonesia was committed to promoting the human rights of women and girls. His country had taken concrete action to strengthen legal frameworks and improve institutional mechanisms to ensure greater gender responsiveness. The Ministry of Women's Empowerment and Child Protection had launched a programme to end violence against women and girls, trafficking in persons and barriers to economic justice, and to tackle the factors contributing to violence against women. The Government had integrated key strategies for achieving women's rights into the National Action Plan on Human Rights for the period 2015-2019.
3. Indonesia had incorporated the targets of the Sustainable Development Goals into the national development plan for the period 2015-2019, which, inter alia, aimed to increase women's quality of life in all areas of development, protect women from all forms of violence, including trafficking, and increase institutional gender mainstreaming. A mechanism had been developed for the protection, promotion, rehabilitation and reintegration of women and child victims; a national task force to combat trafficking in persons, especially women and children, had also been set up. The legal framework continued to be enhanced through the enactment of legislation on combating domestic violence, protecting women and children in conflict areas, protecting witnesses and victims, and combating trafficking in persons. Relevant training and capacity-building for law enforcement officers had been enhanced.
4. **Mr. Hidayat** (Indonesia) said that, in the past, the district of Wonosobo in Central Java had had many problems with migrant workers, but that significant progress had been made since the establishment of the National Authority for the Placement and Protection of Indonesian Migrant Workers and the adoption of a related local regulation. A special programme for the protection of women and children had been introduced. Many local and regional non-governmental organizations (NGOs) played an essential role in raising awareness of the rights of women and migrant workers. In cooperation with the police and the Ministry of Manpower, the local government was working to more closely monitor the activities of private recruitment agencies.
5. **Mr. Kasim** (Indonesia) said that the Government was committed to eradicating all forms of corruption and to that end had established the Corruption Eradication Commission, the Indonesian Financial Transaction Report and Analysis Centre, and the Task Force on the Eradication of Unauthorized Levying. Government ministries and institutions had implemented a zero-tolerance policy with regard to mistreatment of Indonesian migrant workers. The National Human Rights Commission, which had been granted A status for its compliance with the Paris Principles, had a mandate to investigate human rights violations, mediate on human rights issues, conduct studies on the implications of ratifying international human rights instruments, and generally promote human rights. The Commission cooperated with national human rights institutions in the Middle East and had entered into an agreement with its counterpart in Jordan for the protection of Indonesian migrant workers there.
6. **Mr. Hermono** (Indonesia) said that the two factors that pushed migrant workers towards illegal arrangements were high costs and lengthy processes. Accordingly, the Government had taken measures to reduce the costs associated with migration. The Directorate General of Immigration had launched a free passport service for prospective first-time migrant workers, under which applicants had only to pay to have their fingerprints taken. It also gave subsidies to migrant workers. Under revised legislation,

migrant workers would no longer have to pay any costs associated with the migration process.

7. **Mr. Napitupulu** (Indonesia) said that immigration detention centres were regulated by Law No. 6/2011 on Immigration and its implementing regulations, and that the competent authority was the Directorate General of Immigration. The Immigration Law provided for two types of immigration detention facility: immigration detention centres and temporary detention rooms in local immigration offices. There were 13 immigration detention centres nationwide for the temporary detention of foreign nationals who had violated Indonesian immigration law and were subject to administrative measures and awaiting deportation. As to the differences between immigration detention centres and prisons, the former were under the authority of the Directorate General of Immigration while the latter were under the Directorate General of Corrections. Detention centres were intended for temporary detention pending deportation, whereas prisons were generally for longer-term detention based on a court decision. The maximum duration of placements was 30 days in immigration detention rooms and 10 years in immigration detention centres. Detainees who had exceeded the 10-year limit were allowed to stay in community houses, where they had a certain amount of freedom, but still needed to be supervised to ensure that they did not jeopardize the safety and security of the community and other detainees.

8. Detainees who were ill or pregnant were placed in separate facilities, and the Ministry of Social Affairs had a shelter for unaccompanied children. Families were assigned their own room, separately from other detainees. Minors were occasionally separated from their parents if it was in their best interests. Procedures were in place to ensure that all measures imposed on minors were in their best interests and that their welfare was monitored. Most detainees in detention facilities were refugees and asylum seekers. As at May 2017, there had been 2,050 detainees in immigration detention centres, 1,980 in immigration detention rooms and more than 4,000 in community-based detention facilities. Once a person was detained, the immigration authorities notified the relevant embassy and facilitated the provision of interpreting services.

9. Detainees who were subjected to improper treatment in immigration detention facilities could file complaints through the suggestion boxes in every facility or directly with the Directorate General of Immigration. In response to a recent complaint by the Indian authorities about the inappropriate treatment of an Indian national, the Directorate General had formed a team to investigate the report and, if necessary, impose sanctions. The Directorate General upheld the rights of detainees in immigration detention, such as the right to practise religious beliefs, to receive decent food and health services, to submit complaints and concerns, and to be visited by relatives, lawyers, spiritual counsellors, doctors and government representatives. Decisions on the placement of foreign nationals in immigration detention could be appealed through the Ministry of Law and Human Rights, although the complainant must remain in detention while awaiting the ministerial decision, which was final.

10. **Mr. Manalu** (Indonesia) said that detainees who were sick were moved elsewhere. In addition, the Ministry of Social Affairs ran two special shelters, one of them in Jakarta, for unaccompanied children. An assessment was made to determine how each child should be dealt with.

11. **Mr. Bangkona** (Indonesia) recalled that Indonesia was a member of the Regional Consultative Process on the Management of Overseas Employment and Contractual Labour for Countries of Origin in Asia (the Colombo Process), which promoted effective dissemination of information to migrant workers and their families before departure. It also took part in the Abu Dhabi Dialogue, a forum to enable sending and receiving countries to discuss challenges and best practices regarding temporary contractual labour, at which it had recently underlined the importance of inter-State cooperation to ensure safe and fair migration.

12. The Ministry of Manpower had recently announced that social security was in future to be handled by the State. The Government was committed to ensuring that social security for migrant workers was moving in the right direction and that claims could be handled

promptly, not least because so many migrant workers were financially less well-off and were not highly educated.

13. **Mr. Iqbal** (Indonesia) said that, as co-chair of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, Indonesia had encouraged sending and receiving countries to work together towards common goals in order to prevent migrant workers throughout the region from falling victim to exploitation, and to protect their rights. To influence regional policymaking, Indonesia and its co-chairs, Australia and the International Organization for Migration (IOM), had initiated the development, in the framework of the Bali Process, of relevant policy guides.

14. His Government had recently been commended by the Indonesian Supreme Auditor for its improved performance in protecting migrant workers abroad. That performance would not have been possible without the support of civil society organizations, and the Government was unreservedly committed to its partnership with civil society at all levels. The Ministry of Foreign Affairs, for example, was directly accessible around the clock to all civil society activists.

15. Civil society associations were involved in the entire cycle of migrant worker placement and protection, helping, among other things, to empower potential migrant workers, as well as influencing policymaking. Some of their programmes were run in cooperation with Government institutions and others were run independently. The new legislation on protection of migrant workers had been a significant achievement as the views of civil society associations had been taken into account.

16. Some receiving countries did not guarantee freedom of association, and in such countries Indonesian associations were authorized to act as first responders for Indonesian migrant workers experiencing problems.

17. **Mr. Tall** asked whether corporal punishment was still a feature of the judicial process in the State party and whether it would apply to migrant workers.

18. If he had understood correctly, migrant workers could be detained for 10 days without any judicial review of their deprivation of liberty except by application to the Ministry of Justice, which effectively meant that the case would be determined by a political and not a judicial authority. Yet the Convention gave all migrant workers the right to an effective remedy: an administrative decision should be subject to judicial review. Could the delegation confirm that there was indeed no judicial remedy in cases of administrative detention?

19. **Mr. El-Borai** asked whether the various regional forums mentioned by the delegation addressed the issues of the *kafalah* system of sponsorship of migrant workers and capital punishment.

20. The delegation had stated that migrant workers were treated on an equal footing with nationals except in cases of infractions committed at the workplace. He wondered what such infractions might be and what penalties migrant workers might incur.

21. **Mr. Ceriani Cernadas** said that he would appreciate information about the conditions in migrant detention centres. They ought to be very different from conditions in prisons, since inmates had committed no crime. Moreover, he would appreciate confirmation that, despite the fact that migrant detention was apparently a temporary measure, it could last for up to 10 years. That seemed rather a long time; many criminal sentences would be shorter. He understood that, on release from temporary detention, the migrant was required to report to the migration authorities daily for security reasons. He would like to know what kind of security risk a given individual might represent solely on the grounds of irregular migration status. Conversely, he wondered whether the State party would consider that its own nationals who found themselves in an irregular migration situation abroad would automatically represent a threat to the security of the State in question.

22. He asked how the grounds for deprivation of the liberty of adult migrants were determined. No crime had been committed and in any case, according to the Committee's interpretation of the Convention, detention should be a last resort, to be applied in

exceptional circumstances. He wondered what measures might be applied before the last resort of deprivation of liberty was imposed.

23. He enquired whether detention was the State party's only response to irregular migration of adults and if not, what the alternatives were.

24. The delegation had referred to the principle of the best interests of the child in explaining why children might justifiably be separated from their parents — for example, when they had been subjected to violence — but he wondered why the best interests of the child were never evaluated in such a way as to preclude deprivation of liberty. In that regard, he recalled the Committee's position that no child should ever be placed in detention on grounds relating to migration.

25. **Mr. El Jamri**, noting that some migrant detention centres were in fact former prisons, said that must mean that detainees were held in the same conditions as prisoners, which ran contrary to the provisions of the Convention. The delegation had referred both to "retention" and to "detention", and to "cells", "rooms" and "wings"; he would like to know what the distinctions between those terms were. In general, he would appreciate hearing how migrant detainees actually lived in those centres and also whether any of the complaints deposited in the suggestion boxes provided had been taken up.

26. He had been alarmed to learn that a person could be detained for up to 10 years just for being a migrant, and he would like to know how the detention decision was taken and by whom. Similarly, he would be interested to learn about the decision-making process leading up to separation of children from their families: was there an evaluation or an enquiry? What were the rules on visiting rights?

27. **Mr. Ünver**, noting that though remittances could be of great benefit to national economies they could also be conducive to inflation if used solely for consumption purposes, asked whether they were used to reduce unemployment in the State party by, for instance, being channelled into investment in small-scale businesses for returnees. He enquired about governmental action to draw on the professional expertise that returning Indonesian migrants had gained during long-term employment abroad.

28. **Mr. Núñez-Melgar Maguiña**, underscoring the basic principle that migration as such could not be criminalized, asked why the State party had failed to implement articles 18 and 19 of the Convention. He asked whether, when there were grounds for lengthy detention of a migrant, the Indonesian authorities contacted consular staff from the detainee's home country, in accordance with article 38 of the Vienna Convention on Diplomatic Relations, to ensure that due process was complied with.

29. He enquired about mechanisms to ensure that the massive inflow of remittances from Indonesian citizens abroad was used to facilitate access to loans and social programmes. After all, when family members spent remittances received from abroad, the State benefited from the tax revenue stemming from specific purchases.

The meeting was suspended at 11.15 a.m. and resumed at 11.40 a.m.

30. **Mr. Komar** (Indonesia) said that detention centres run by the Directorate General of Immigration housed not only persons who had violated immigration law but also refugees and asylum seekers awaiting resettlement. In fact, asylum seekers and refugees now accounted for the majority of inmates. As Indonesia was not a party to the 1951 Convention Relating to the Status of Refugees, no temporary shelter was provided for refugees and asylum seekers. However, the authorities worked closely with the Office of the United Nations High Commissioner for Refugees and IOM when processing their cases. Most detention centres were admittedly overcrowded because they were now required to host about 14,000 refugees and asylum seekers.

31. Migrants were not criminalized as such. Most of the migrants in detention centres had violated immigration law and were held pending completion of the deportation procedure. The authorities worked closely with relevant embassies in that connection.

32. Minors were sheltered together with their families, including in detention centres, which could be described in their case as temporary shelters. Unaccompanied minor refugees and asylum seekers were a source of concern. Special facilities were provided for

them, and the authorities worked closely with civil society, for instance, to guarantee their right to education.

33. **Mr. Hermono** (Indonesia) said that the Government's policy was not to criminalize persons who violated immigration law, but to deport them as soon as possible. Persons who were unwilling to return to their home country were mostly asylum seekers rather than migrant workers. The maximum period of detention was 10 years, and most of the persons who had been detained for that period were refugees and asylum seekers. No migrant worker had, to his knowledge, been detained for such a lengthy period. As for corporal punishment, it existed only in Aceh Province, which applied sharia to its inhabitants but not to migrant workers or other foreigners.

34. **Mr. Iqbal** (Indonesia), responding to a question about protection for Indonesian migrant workers against the *kafalah* system in receiving countries, said that the prevailing culture in those countries could not be abolished. It determined the manner in which domestic workers were treated. As the public authority responsible for domestic workers in some Middle Eastern countries was the ministry of immigration rather than the ministry of labour, domestic workers could not invoke the labour code when seeking justice. As their situation was deemed to be a private issue, neither the local police nor Indonesian embassies or consulates could come to their rescue. As the *kafalah* system could therefore place migrant domestic workers in a highly vulnerable situation, Indonesia had in 2010 imposed a moratorium on such employment.

35. **Mr. Bangkona** (Indonesia) said that the Government had not established a specific body to handle the issue of remittances. However, it granted subsidies and provided entrepreneurial training and assistance for persons who wished to start a business in order to optimize the use made of remittances. The aim was to avoid their use solely for consumption.

36. **Mr. Hidayat** (Indonesia) said that the government of a region in Central Java was implementing programmes developed by the national authorities and Migrant Care. Three basic objectives were being promoted in a number of villages. The first concerned the promotion of better use of remittances. In the past, many migrant workers had used them solely for consumption, but the district of Wonosobo had recently collaborated with local NGOs, including Migrant Care, in using remittances to implement a regional action plan for poverty alleviation. For instance, a former migrant worker had now established a small business and cooperative to promote awareness among migrant workers of the need to use remittances for more productive purposes.

37. **Mr. Hermono** (Indonesia) said that many examples could be cited of Government training courses for former migrant workers. As for insurance, prior to 1 August 2017 all migrant workers had been covered by insurance in Indonesia and in the receiving countries. However, analyses had shown that most risks were actually covered by insurance in the receiving countries. The existing programme had therefore been replaced by a social security programme covering primarily accidents and death. For example, if a migrant worker passed away, one of the worker's children would receive a study grant until he or she graduated from university. If the migrant worker had an accident, all hospital costs would be covered.

38. **Mr. Ceriani Cernadas** said that, while the Convention Relating to the Status of Refugees was indeed the most relevant instrument with regard to asylum seekers applying for refugee status, the Migrant Workers Convention covered many rights relevant for persons denied refugee status and facing deportation as well as persons granted that status, many of whom subsequently became migrant workers in the receiving country. He asked whether the national authorities had considered using non-custodial alternatives to deprivation of liberty in the case of persons who had violated migration laws and were awaiting a decision on deportation.

39. **Mr. El Jamri** said that, as nationals of a member State of the Organization of Islamic Cooperation, Indonesian citizens were subject to the provisions of the criminal legislation of whichever other member State of that body they might reside in. Regarding the *kafalah* system, he noted that certain receiving countries implementing it confiscated migrant workers' passports, in contravention of international law. The Government of

Indonesia had a duty to demand the return of those documents to their holders. Migrant workers employed under the *kafalah* system were wholly dependent upon the goodwill of a third party. The Government must review its position in that regard and raise the issue with the receiving countries concerned in the framework of the Colombo Process and the Abu Dhabi Dialogue.

40. Furthermore, even though Indonesia had not ratified the Convention Relating to the Status of Refugees, the Government should improve its treatment of migrants and asylum seekers. There had been reports of vessels transporting migrants being towed away from the coast of Indonesia into international waters. Such acts constituted collective expulsion. Under the Migrant Workers Convention, each case of expulsion should be treated individually.

41. **The Chair** asked whether there were any existing or planned measures to address overcrowding in detention centres. He enquired whether Indonesian migrant workers in an irregular situation abroad could obtain official documents, including passports, from Indonesian embassies or consulates.

42. **Mr. Hermono** (Indonesia) said that the delegation would provide a written response to Mr. Ceriani Cernadas's question about migrants held in detention. As for corporal punishment, Aceh Province was the only part of the country where sharia was applied.

43. Indonesian migrant workers in an irregular situation abroad must return home and could obtain the necessary travel documents from their local embassy or consulate. In certain cases, where the receiving country had undertaken to grant a work permit, the worker concerned could be issued a passport.

44. **Mr. Napitupulu** (Indonesia) said that his Government had set up community detention facilities for women, children and refugees and was building more such facilities. It was cooperating with IOM to tackle overcrowding in detention centres.

45. **Mr. Ünver** (Country Rapporteur) said that, while the State party faced a number of challenges, it seemed willing to improve its migration legislation. The authorities had established a good working relationship with NGOs with regard to decision-making on migration issues. The State party should consider ratifying the Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the Private Employment Agencies Convention, 1997 (No. 181) of the International Labour Organization, as well as the Convention Relating to the Status of Refugees. Various Committee members had highlighted the important issues of the holding of asylum seekers and refugees in detention centres and the use of corporal punishment in Aceh Province. Overall, the delegation's replies, in particular regarding remittances, had been satisfactory. The representatives of various NGOs participating in the meeting had also provided valuable input.

46. **Mr. Hermono** (Indonesia) said that his Government was firmly committed to protecting all migrant workers and their families, both at home and abroad, and to working closely with the Committee to address the issue of migration. He wished to acknowledge the contribution of the National Human Rights Commission and of a number of NGOs to promoting migrant workers' rights.

47. **The Chair** said that the dialogue had provided further insight into the situation of foreign migrant workers and their families in Indonesia and that of their Indonesian counterparts abroad. The State party was to be congratulated for enacting Law No. 39/2004 on the Placement and Protection of Indonesian Overseas Workers and for curbing the activities of private recruitment agencies.

The discussion covered in the summary record ended at 12.30 p.m.