



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

Distr.: General
13 September 2017

Original: English

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

Summary record of the 363rd meeting

Held at the Palais Wilson, Geneva, on Tuesday, 5 September 2017, at 3.15 p.m.

Chair: Mr. Brillantes

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The meeting was called to order at 3.25 p.m.

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

Initial report of Indonesia (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. Bangkona** (Indonesia), introducing his country's initial report, said that the protection of migrant workers was of the utmost importance. It was mentioned in the Constitution and was given due attention in the nine national development priorities established by the President of Indonesia.
3. Indonesia was an extremely diverse and heavily populated country with hundreds of languages and dialects, located on the world's largest archipelago. Its population numbered 285 million, with a workforce of 131 million, and an estimated 6.5 million Indonesians were working abroad. The initial report had been prepared in an all-inclusive process engaging a wide variety of stakeholders, including government ministries and institutions, academics, representatives of civil society, labour associations, human rights institutions, the media and migrant workers themselves.
4. The protection of migrant workers had been given high priority in national policy. The National Action Plan on Human Rights for the period 2015-2019 aimed inter alia to improve monitoring and law enforcement in respect of the placement and protection of Indonesian migrant workers, to upgrade the skills of migrant workers and thus encourage their placement in the formal sector, and to assist Indonesian citizens abroad, including migrant workers, when they required services.
5. Since the country's ratification of the Convention in 2012, the Government had adopted a number of measures to build Indonesian migrants' capacities and skills, empower their families and protect their rights. It had also taken steps in response to the recommendations received during the third cycle of the universal periodic review. The Government was amending Law No. 39/2004 on the Placement and Protection of Indonesian Overseas Workers to bring it into line with the Convention. The amended version would shift the focus of the legal framework covering Indonesian migrant workers from placement to protection, restricting the activities of private recruitment agencies to marketing and job placement so as to avoid illegal practices. It would also set up empowerment and protection mechanisms for migrant workers' families remaining in Indonesia. In the future, prospective migrant workers would be expected to register proactively instead of being recruited; local authorities would have a more significant role to play in the migration process; the cost of migration would be borne by employers and not by migrant workers; responsibilities would be more clearly defined among institutions; and all Indonesian migrant workers would be covered by the national social security scheme.
6. Local governments had adopted a number of migration-friendly policies, such as the provision of services and supervision for migrant workers' children and various training programmes. Local authorities were also more actively engaging civil society and religious organizations to address migration issues. The districts of Wonosobo, Jember, Banyuwangi and Central Lombok were among the local administrations that had undertaken the most effective programmes. Government institutions had stepped up inter-agency cooperation to address violations of the rights of Indonesian migrant workers abroad — for example, by coordinating data sharing, law enforcement activities and border patrols. Task forces for the prevention of irregular migration by Indonesian workers had been set up at 21 points of departure from the country. In 2017, the task forces had postponed the issuance of passports to nearly 5,000 persons who were at risk of migrating in irregular circumstances.
7. To provide services for Indonesian migrant workers abroad, the Government had set up citizen service units at 24 diplomatic missions in countries of employment. The units provided consular services, legal assistance, education and training, shelter and health services for Indonesian migrant workers and maintained 24-hour assistance hotlines. As

part of the revision of Law No.39/2004, it was expected that five more units would be added in the near future, thus bringing their number to 29.

8. Training was provided at State and privately owned vocational training centres, and local governments had begun setting up one-stop service centres and offering competency training for prospective migrant workers, along with instruction in entrepreneurial skills for returnees. Of the 281 training centres providing such services, 261 had been established by local governments. Various training programmes had also been carried out in Lampung and Jogjakarta to upgrade the qualifications of Indonesian migrant workers to meet the demands of the international job market. Demand for health-care personnel and service-related staff was particularly strong. There were plans to expand such activities to seven more provinces in 2017.

9. To ensure the safety of Indonesian migrant workers, the Government provided pre-departure training courses covering the legal systems and cultures of destination countries, the rights and obligations of migrant workers, remittance questions and the threats posed to migrant workers by HIV/AIDS and narcotics. It also oversaw the activities of some 570 registered employment agencies and took action against those that violated laws governing the recruitment and placement of migrant workers. In 2016 it had thus revoked the licences of 49 agencies and had suspended the activities of 199 others. Eight ministries, working with local administrations, had recently set up the productive migrant workers' village programme, which provided individuals with migration-related information and assisted in securing documentation for migrants. The programme also encouraged spouses of migrant workers to establish productive businesses and provided financing, and it set up community parenting arrangements for children of migrant workers who remained in Indonesia. The National Action Plan on Human Rights for the period 2015-2019 called for the establishment of community learning centres for the children of Indonesian migrant workers. Some 25,000 Indonesian students in Malaysia had enrolled in such centres. The Government was committed to providing all children, including those born out of wedlock or whose fathers were unknown, with birth certificates.

10. The Government was committed to according foreign workers the same rights as Indonesian citizens. Indonesia had ratified the Equal Remuneration Convention, No. 100 (1951) and the Discrimination (Employment and Occupation) Convention, No. 111 (1958) of the International Labour Organization (ILO). All foreign workers who remained in the country for more than six months were required to enrol in the national social security system. The authorities had recently been confronted with an increasing number of foreign workers who violated the country's immigration laws and regulations. In response, the Government had deported more than 1,400 foreign workers, and it was strengthening enforcement of immigration legislation and the monitoring mechanism for foreigners.

11. Despite the Government's best efforts to protect Indonesian migrant workers abroad, violations of their rights had garnered public attention, which had resulted in pressure on the Government to increase protection efforts. Indonesian migrant workers sometimes faced terrible conditions of employment and had to cope with underpayment, mental and physical abuse, criminal charges and human trafficking. The Ministry of Social Affairs provided victims with shelter, repatriation and social rehabilitation services, as described in his country's initial report. Another challenge in improving the protection of migrant workers involved ensuring accurate and integrated data collection and management throughout the migration process.

12. Most of the destination countries relevant for Indonesian migrant workers had not signed the Convention. The Government had therefore concluded a number of bilateral agreements to protect Indonesian workers in other countries and had included similar clauses in some of its economic partnership agreements. It was also working in the framework of regional structures, including the Association of Southeast Asian Nations (ASEAN), to protect migrant workers. A draft instrument on the protection of the rights of migrant workers had been agreed on at a recent ASEAN meeting and was expected to be adopted at the ASEAN summit to be held in November 2017. Indonesia also actively contributed to the work of the Regional Consultative Process on the Management of Overseas Employment and Contractual Labour for Countries of Origin in Asia (the

Colombo Process) and the Abu Dhabi Dialogue, which brought together countries of origin and countries of destination in Asia.

13. The Government called upon all States, particularly destination countries, to ratify the Convention. To date, only 49 countries had done so, and most were sending States. Universality was crucial for improving the situation of migrant workers all over the world.

14. **Mr. Ünver** (Country Rapporteur) said that he would appreciate detailed information on the legislative measures taken to bring the national legal framework into line with the Convention. He asked whether the State party planned to take further steps to prevent violations of the rights of Indonesian migrant workers, and whether the Convention could be applied directly in courts and by the administrative authorities. He wondered whether the State party had raised the possibility of ratifying the Convention with any of the destination countries with which it had negotiated memorandums of understanding.

15. **Mr. El Jamri** asked what efforts had been made to improve the regulation of recruitment agencies, and what results had been achieved in that regard. Information on the coordination of the various measures taken to protect migrant workers would be useful, as would an explanation of the status of the Convention in the national legal framework. He asked whether any efforts had been made to facilitate the implementation of the Convention. For example, had public officials responsible for matters pertaining to migration received training on its provisions, and had it been cited in any court judgments?

16. He would appreciate an explanation of the State party's role in the Colombo Process and the Abu Dhabi Dialogue. He would be grateful if the delegation could indicate what was being done to prevent corruption among public officials and recruitment agencies and provide examples of any penalties imposed or preventive measures taken in that regard. In relation to social security, he asked whether the State party had considered establishing basic coverage for Indonesian migrant workers not covered by another country's social security system, and whether the social security rights enjoyed by Indonesian migrant workers covered by another country's system were portable.

17. **Mr. Tall** said that he would appreciate an update on the status of the draft amendment to Law No. 39/2004 and an explanation of how it would strengthen the protection of the rights of migrant workers. It would be helpful to know what measures had been taken to protect Indonesian migrant workers in Saudi Arabia, a country that had ratified neither the Convention nor the draft memorandum of understanding it had signed with the State party.

18. With regard to Law No. 6/2011 on Immigration, further information on the detention centres in which migrants were held, the detention procedure and how those detention centres differed from prisons would be welcome. In that connection, he wished to know what remedies were available to detained migrants and what measures had been taken to prevent arbitrary detention and corruption in the detention process.

19. **Mr. Ceriani Cernadas** said that, in relation to Law No. 6/2011, it would be helpful to learn what measures had been taken to prevent the detention of migrant workers and their families and to what extent the State party had taken note of the Committee's position, as set forth in its general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families, that detention should be a measure of last resort. He asked whether detained children and families were held in open accommodation facilities, whether children continued to be held in administrative detention centres and whether asylum seekers and persons rescued at sea were detained. He would appreciate information on reports issued by the National Human Rights Commission about its visits to places of detention, on legal aid guarantees for detained persons and on the implementation of the provisions of Law No. 6/2011 that imposed migration restrictions on persons suffering from infectious diseases or mental disorders.

20. More broadly, information on efforts made to address the structural causes of the high level of migration from Indonesia, in particular the high prevalence of discrimination on grounds of gender, ethnicity, religious affiliation and sexual orientation, would be welcome. It was unclear whether married women were required to obtain their husbands' permission before migrating to other countries.

21. He asked whether the impact of the ban on the placement of Indonesian domestic workers in certain foreign countries had been evaluated and, if it had, what the outcome of that evaluation had been. For example, had it led to an increase in irregular migration? He would be grateful if the delegation could respond to reports that persons of Chinese origin experienced xenophobia and racism in Indonesia, and explain what efforts had been made to improve their situation.

22. It would be helpful if the delegation could inform the Committee of any measures taken to facilitate the issuance of birth certificates to children born to Indonesian migrant workers abroad and comment on reports that children born to single Indonesian mothers abroad were registered as illegitimate. He would appreciate information on the migration of Indonesian children for work purposes, in particular to work on oil plantations in Malaysia.

23. **Ms. Landazuri de Mora** asked whether municipalities and local governments provided assistance to the families of migrant workers who had left the country. In that connection, information on how the district of Wonosobo intended to support Indonesian migrant workers and their families at each stage of the migration process would be particularly useful.

24. With regard to the availability of consular assistance for Indonesian migrant workers, she asked how many cases had been handled by consulates and embassies, what services they provided and what responsibilities they assumed for migrants in a vulnerable situation or whose rights had been violated. Were they required to report such cases to human rights bodies in the country of destination and request measures on migrants' behalf?

25. It would be useful to learn what support was available for migrant workers who depended on agencies that had been forced to cease their operations. In particular, she wished to know which body was responsible for supporting such workers and ensuring that their labour contracts remained valid and their wages were paid, and what reparation measures were available to them.

26. **Ms. Dicko** asked why the role of recruitment agencies was being diminished and why stricter regulation was not imposed on them instead. With regard to social security, she asked whether foreign migrant workers in Indonesia were able to retire in their country of origin and whether Indonesian migrant workers covered by other countries' social security systems were able to retire in Indonesia. In addition, it was unclear whether a mechanism had been established to facilitate the payment of remittances by Indonesian migrant workers.

27. **Ms. Dzumhur**, noting the lack of gender balance in the delegation and the fact that most Indonesian migrant workers were women, asked what legislation had been adopted to promote gender equality in the State party. She asked what legislative and institutional mechanisms had been established to combat human trafficking and the exploitation of migrant workers, including sexual exploitation. She enquired whether the National Human Rights Commission had been accredited with A status for compliance with the Paris Principles, what its capacities were, and whether it had field presences throughout the country.

28. Welcoming recent improvements to migration legislation, she asked whether the country's labour legislation ensured that Indonesians and foreigners working in Indonesia were treated equally, and whether its diplomatic missions had the capacity to fully support Indonesian migrant workers, particularly in major destination countries and countries with which no bilateral agreement had been signed.

29. She asked what mechanisms were in place to regulate private employment agencies and whether the State party planned to ratify the ILO Private Employment Agencies Convention, 1997 (No. 181).

30. **Mr. Núñez-Melgar Maguiña** asked what percentage of migration was organized by private recruitment agencies and what percentage through public schemes governed by bilateral agreements. He wondered whether there was any legislation setting out the responsibilities of private agencies and what penalties were imposed on agencies found to have committed abuses.

31. It would be helpful to know whether training was provided for Indonesian migrant workers prior to their departure; what percentage of those leaving Indonesia were skilled workers, as opposed to manual workers; and whether bilateral programmes had been established to ensure that workers received training in their country of origin before migrating to Indonesia.

32. He would like more information on the content of any bilateral agreements signed with major destination countries relating to the prevention of human trafficking; the steps taken to ensure that Indonesian migrant workers had access to legal assistance; and any provision made for the repatriation of Indonesian migrant workers in the event of death or a serious problem. He wondered whether income from remittances was being used to further national development.

33. **Ms. Castellanos Delgado** asked whether the Government had any data on the number of Indonesians planning to work abroad; whether such persons, especially women and domestic workers, were informed of the possible risks before their departure; and what steps were taken to protect them from those risks.

34. She enquired whether Indonesian migrant workers were usually accompanied by their family; whether the Government had signed agreements with destination countries to ensure the protection of migrant workers; whether there were statistics on the number of cases in which women migrated from Indonesia without their children; and what efforts were made to provide health and education support to those children.

35. She asked whether there were programmes in place to ensure that income from remittances was used to increase the country's economic growth and to support those in need, including families of migrant workers. Lastly, noting that Indonesia was made up of many islands, she asked how the Government monitored and controlled outmigration throughout the archipelago.

36. **The Chair**, drawing attention to reports that several hundred Indonesian migrant workers were on death row, asked what action the Government had taken in response to those convictions. With regard to the recent ban on the deployment of domestic workers to certain countries, he enquired how many Indonesians were employed as domestic workers abroad; whether that number had decreased as a result of the ban; how many persons would be prevented from migrating on account of the ban; why the ban had been declared; and whether any of the destination countries concerned had challenged the ban. He asked how the State party would ensure that the ban did not lead to an increase in irregular migration.

The meeting was suspended at 4.50 p.m. and resumed at 5.15 p.m.

37. **Mr. Iqbal** (Indonesia) said that the migration ban concerned 19 countries in the Middle East and applied to all Indonesian citizens. It had been declared for a number of reasons. First, the deteriorating security situation in some countries, such as Yemen, was a source of concern. Second, some countries had not complied with Indonesian legislation on the placement and protection of Indonesian migrant workers, which stipulated that destination countries must establish regulations protecting the rights of migrant workers and sign a bilateral agreement with Indonesia. Third, the Government wished to limit migration flows while it took steps to improve labour migration governance at the domestic level.

38. Indonesia would continue to develop its bilateral relations with the countries concerned by the ban. In recent months, 10 of those countries had sent delegations to Indonesia to request that the Government reconsider its decision. In pursuing and developing its policy in that area, the Government would take into account legislative improvements made by the States concerned. It had launched a programme to build the capacities of domestic workers and thus improve their employment prospects. Since the introduction of the ban, the number of Indonesian migrant workers deployed in the Middle East had decreased by almost 50 per cent.

39. The Government had signed specific agreements on combating human trafficking with countries where the risk of trafficking was particularly high, such as the United Arab Emirates. Indonesian communities in destination countries were encouraged to establish associations for the protection of migrant workers. Before the end of 2017, the Ministry of Foreign Affairs would sign a memorandum of understanding with Justice Without Borders

on access to justice for migrant workers in Singapore and Hong Kong, China, and on the provision of training for consular staff. The protection of Indonesian migrant workers had been mainstreamed in diplomatic training at all levels; consular staff also received thematic training on topics such as forensic identification.

40. The Ministry of Foreign Affairs had opened a channel that enabled non-governmental organizations (NGOs) representing Indonesian domestic workers abroad to communicate directly with the Ministry so that support could be provided to those who required it.

41. Around 60 Indonesian nationals had been sentenced to death in a number of destination countries. The individuals in question were provided with consular and diplomatic assistance, including legal aid, which was made available from the outset of the criminal justice process. Although it was necessary to respect the laws of destination countries, efforts were made to use diplomatic channels to persuade the judicial authorities in those countries to relieve Indonesians facing the death penalty and hand them a lesser sentence.

42. **Mr. Hermono** (Indonesia), speaking about progress on the draft amendment to Law No. 39/2004, said that the Government and the parliament had agreed to shift the focus of the legislation from the placement of migrant workers to the protection of such workers and their families. The bill was designed to ensure that the Convention would be enforced, and to grant the Government a mandate to support the families of migrant workers. In addition, it would reduce the extent to which private recruitment agencies exploited such workers by making local governments responsible for all stages of the recruitment process. To that end, support centres were being established in regions where prospective migrant workers lived. Plans were in place to establish nine such centres by the end of 2017 and 52 by the end of 2019, enabling prospective migrant workers to register in their own regions.

43. In accordance with Regulation No. 17/2012 of the Ministry of Manpower and Transmigration, private agencies that breached the regulations governing the recruitment of migrant workers had their licences revoked. In 2017, the licences of some 56 recruitment agencies had been revoked for offences such as overcharging migrant workers and sending them to countries where they were prohibited from working under Indonesian law. In January 2017, the activities of 190 such agencies had been suspended, mostly for overcharging. Generally speaking, agencies whose licences had been revoked remained responsible for protecting and ensuring the safety of migrant workers they had placed and could be required to contribute to the cost of their airline tickets. In some cases, the responsibility for such workers was transferred to agencies approved by the Government.

44. Some 62 per cent of migrant workers were women and, of those, 59 per cent were married or divorced and could therefore be assumed to have children. In order to care for such children, the Government had established a programme in cooperation with local governments and NGOs.

45. Only 2 per cent of Indonesian migrant workers held professional qualifications. Of the remainder, 27.5 per cent had completed only elementary education, while 71 per cent had at least some secondary schooling. As the statistics indicated, the majority of Indonesian migrant workers had low levels of education and mainly found employment in the labour and construction sectors. Indonesia did not, therefore, suffer from a “brain drain”.

46. To combat trafficking in persons, the Government had adopted Law No. 21/2007 on the trafficking of migrant workers and Law No. 69/2008 on the establishment of a national task force on trafficking in persons. Local governments had adopted their own regulations to combat that crime. Ministerial Decree No. 260/2015 concerning the Banning of the Placement of Indonesia Overseas Workers with Individual Employers in Middle East Countries was also designed to address it. In January 2007, a task force involving seven ministries and other government institutions had been established to combat trafficking in persons, especially those recruited to work in the Middle East. In July 2007, the National Police had raided six recruitment agencies and arrested 29 individuals for offences related to trafficking in persons. As a result, protection had been granted to over 200 potential victims of trafficking. In addition, the immigration authorities had begun scrutinizing

passport applications more carefully to ensure that prospective migrant workers were not exposing themselves to risks. As a result, over 200 passport applications had been refused.

47. In 2015, training had been provided to 18,000 workers under a programme established to assist returning domestic workers and their families. In addition, training in financial literacy was provided to migrant workers and their families both prior to their departure from Indonesia and during their time abroad.

48. **Mr. Bangkona** (Indonesia) said that measures were being taken to devolve power from the central authorities to the regions, which meant that amendments to legislation had to be discussed with district and municipal authorities. Discussions concerning migrant workers involved all levels of government and the parliament. As part of the process of amending legislation on construction workers, his Government had signed a memorandum of understanding with the Government of Malaysia in order to enhance the protection of Indonesian construction workers in that country and ensure that they were paid the same as their Malaysian counterparts.

49. Migrant workers from other countries who entered Indonesia legally were required to follow the regulations and standards in force but were not subjected to discrimination.

50. **Mr. Tene** (Indonesia) said that Indonesia was a multi-ethnic country in which discrimination was banned under the Constitution. When cases of discrimination arose, victims had recourse to various legal and political remedies. The Government had established community learning centres to ensure that the children of migrant plantation workers received an education rather than working. The National Human Rights Commission had been granted A status in accordance with the Paris Principles.

51. **Mr. Ünver**, commending the State party on the fact that civil society participated actively in decision-making processes, said that he would welcome further information on how the Government cooperated with NGOs working in the field of migration in Indonesia and abroad.

52. **Mr. El-Borai**, referring to the overcharging of migrant workers by recruitment agencies, said that he would welcome more detailed information on the fees that the State party considered reasonable and whether those fees were specified in legislation.

53. He asked whether the list of 19 countries in which Indonesian workers were forbidden to work included those countries in which Indonesian nationals had been sentenced to death, and whether the memorandum of understanding established with Saudi Arabia on the rights of migrant workers and members of their families addressed the question of the *kafalah* (sponsor) system. Lastly, he said that he would like more information on the nature of the offences typically committed by foreign migrants working in Indonesia and the sanctions imposed on them as a result.

54. **Mr. Ceriani Cernadas** said that he would welcome further information on the bilateral agreements established in recent years between the Governments of Indonesia and Australia regarding measures to address irregular migration by sea from Indonesia to Australia. In particular, he wished to know what procedures governed the interception and return of migrants from Indonesia, including both Indonesian nationals and nationals of other countries, and what safeguards had been established, either in Indonesian regulations or in bilateral agreements, to ensure that their rights under the Convention were protected.

The meeting rose at 5.55 p.m.